

GSA-2019-001090 Enclosures

41 CFR Part 105-60 - PUBLIC AVAILABILITY OF
AGENCY RECORDS AND INFORMATIONAL
MATERIALS

General Services Administration

§ 105–60.000

any event, termination of the collection action will have been deemed to occur if GSA has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

PART 105–60—PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS

Sec.

105–60.000 Scope of part.

Subpart 105–60.1—General Provisions

105–60.101 Purpose.

105–60.102 Application.

105–60.103 Policy.

105–60.103–1 Availability of records.

105–60.103–2 Applying exemptions.

105–60.104 Records of other agencies.

Subpart 105–60.2—Publication of General Agency Information and Rules in the Federal Register

105–60.201 Published information and rules.

105–60.202 Published materials available for sale to the public.

Subpart 105–60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions

105–60.301 General.

105–60.302 Available materials.

105–60.303 Rules for public inspection and copying.

105–60.304 Public information handbook and index.

105–60.305 Fees.

105–60.305–1 Definitions.

105–60.305–2 Scope of this subpart.

105–60.305–3 GSA records available without charge.

105–60.305–4 GSA records available at a fee.

105–60.305–5 Searches.

105–60.305–6 Reviews.

105–60.305–7 Assurance of payment.

105–60.305–8 Prepayment of fees.

105–60.305–9 Form of payment.

105–60.305–10 Fee schedule.

105–60.305–11 Fees for authenticated and attested copies.

105–60.305–12 Administrative actions to improve assessment and collection of fees.

105–60.305–13 Waiver of fee.

Subpart 105–60.4—Described Records

105–60.401 General.

105–60.402 Procedures for making records available.

105–60.402–1 Submission of requests.

105–60.402–2 Response to initial requests.

105–60.403 Appeal within GSA.

105–60.404 Extension of time limits.

105–60.405 Processing requests for confidential commercial information.

Subpart 105–60.5—Exemptions

105–60.501 Categories of records exempt from disclosure under the FOIA.

Subpart 105–60.6—Production or Disclosure by Present or Former General Services Administration Employees in Response to Subpoenas or Similar Demands in Judicial or Administrative Proceedings

105–60.601 Purpose and scope of subpart.

105–60.602 Definitions.

105–60.603 Acceptance of service of a subpoena duces tecum or other legal demand on behalf of the General Services Administration.

105–60.604 Production or disclosure prohibited unless approved by the Appropriate Authority.

105–60.605 Procedure in the event of a demand for production or disclosure.

105–60.606 Procedure where response to demand is required prior to receiving instructions.

105–60.607 Procedure in the event of an adverse ruling.

105–60.608 Fees, expenses, and costs.

AUTHORITY: 5 U.S.C. 301 and 552; 40 U.S.C. 486(c).

SOURCE: 63 FR 56839, Oct. 23, 1998, unless otherwise noted.

§ 105–60.000 Scope of part.

(a) This part sets forth policies and procedures of the General Services Administration (GSA) regarding public access to records documenting:

(1) Agency organization, functions, decisionmaking channels, and rules and regulations of general applicability;

(2) Agency final opinions and orders, including policy statements and staff manuals;

(3) Operational and other appropriate agency records; and

(4) Agency proceedings.

(b) This part also covers exemptions from disclosure of these records; procedures for the public to inspect or obtain copies of GSA records; and instructions to current and former GSA

§ 105-60.101

employees on the response to a subpoena or other legal demand for material or information received or generated in the performance of official duty or because of the person's official status.

(c) Any policies and procedures in any GSA internal or external directive inconsistent with the policies and procedures set forth in this part are superseded to the extent of that inconsistency.

Subpart 105-60.1—General Provisions

§ 105-60.101 Purpose.

This part 105-60 implements the provisions of the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552. The regulations in this part also implement Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, of June 23, 1987 (3 CFR, 1987 Comp., p. 235). This part prescribes procedures by which the public may inspect and obtain copies of GSA records under the FOIA, including administrative procedures which must be exhausted before a requester invokes the jurisdiction of an appropriate United States District Court for GSA's failure to respond to a proper request within the statutory time limits, for a denial of agency records or challenge to the adequacy of a search, or for a denial of a fee waiver.

§ 105-60.102 Application.

This part applies to all records and informational materials generated, maintained, and controlled by GSA that come within the scope of 5 U.S.C. 552.

§ 105-60.103 Policy.

§ 105-60.103-1 Availability of records.

The policies of GSA with regard to the availability of records to the public are:

(a) GSA records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. GSA will disclose information in any existing GSA record, with noted exceptions, regardless of the form or format of the record. GSA will provide the

41 CFR Ch. 105 (7-1-11 Edition)

record in the form or format requested if the record is reproducible by the agency in that form or format without significant expenditure of resources. GSA will make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(b) The person making the request does not need to demonstrate an interest in the records or justify the request.

(c) The FOIA does not give the public the right to demand that GSA compile a record that does not already exist. For example, FOIA does not require GSA to collect and compile information from multiple sources to create a new record. GSA may compile records or perform minor reprogramming to extract records from a database or system when doing so will not significantly interfere with the operation of the automated system in question or involve a significant expenditure of resources.

(d) Similarly, FOIA does not require GSA to reconstruct records that have been destroyed in compliance with disposition schedules approved by the Archivist of the United States. However, GSA will not destroy records after a member of the public has requested access to them and will process the request even if destruction would otherwise be authorized.

(e) If the record requested is not complete at the time of the request, GSA may, at its discretion, inform the requester that the complete record will be provided when it is available, with no additional request required, if the record is not exempt from disclosure.

(f) Requests must be addressed to the office identified in § 105-60.402-1.

(g) Fees for locating and duplicating records are listed in § 105-60.305-10.

§ 105-60.103-2 Applying exemptions.

GSA may deny a request for a GSA record if it falls within an exemption under the FOIA outlined in subpart 105-60.5 of this part. Except when a record is classified or when disclosure would violate any Federal statute, the authority to withhold a record from disclosure is permissive rather than mandatory. GSA will not withhold a

General Services Administration

§ 105–60.301

record unless there is a compelling reason to do so; i.e., disclosure will likely cause harm to a Governmental or private interest. In the absence of a compelling reason, GSA will disclose a record even if it otherwise is subject to exemption. GSA will cite the compelling reason(s) to requesters when any record is denied under FOIA.

§ 105–60.104 Records of other agencies.

If GSA receives a request for access to records that are known to be the primary responsibility of another agency, GSA will refer the request to the agency concerned for appropriate action. For example, GSA will refer requests to the appropriate agency in cases in which GSA does not have sufficient knowledge of the action or matter that is the subject of the requested records to determine whether the records must be released or may be withheld under one of the exemptions listed in Subpart 105–60.5 of this part. If GSA does not have the requested records, the agency will attempt to determine whether the requested records exist at another agency and, if possible, will forward the request to that agency. GSA will inform the requester that GSA has forwarded the request to another agency.

Subpart 105–60.2—Publication of General Agency Information and Rules in the Federal Register

§ 105–60.201 Published information and rules.

In accordance with 5 U.S.C. 552(a)(1), GSA publishes in the FEDERAL REGISTER, for the guidance of the public, the following general information concerning GSA:

(a) Description of the organization of the Central Office and regional offices and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by GSA; and

(e) Each amendment, revision, or repeal of the materials described in this section.

§ 105–60.202 Published materials available for sale to the public.

(a) Substantive rules of general applicability adopted by GSA as authorized by law that this agency publishes in the FEDERAL REGISTER and which are available for sale to the public by the Superintendent of Documents at pre-established prices are: The General Services Administration Acquisition Regulation (48 CFR Ch. 5), the Federal Acquisition Regulation (48 CFR Ch. 1), the Federal Property Management Regulations (41 CFR Ch. 101), and the Federal Travel Regulation (41 CFR Ch. 301–304).

(b) GSA provides technical information, including manuals and handbooks, to other Federal entities, e.g., the National Technical Information Service, with separate statutory authority to make information available to the public at pre-established fees.

(c) Requests for information available through the sources in paragraphs (a) and (b) of this section will be referred to those sources.

Subpart 105–60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions

§ 105–60.301 General.

GSA makes available to the public the materials described under 5 U.S.C. 552(a)(2), which are listed in § 105–60.302 through an extensive electronic home page, <http://www.gsa.gov/>. A public handbook listing those materials as described in § 105–60.304 is available at GSA's Central Office in Washington, DC, and at the website at <http://>

§ 105–60.302

www.gsa.gov/staff/c/ca/pub1.htm. Members of the public who do not have the means to access this information electronically, and who are not located in the Washington, DC area, may contact the Freedom of Information Act office in any of the regional offices listed in this regulation. These offices will make arrangements for members of the public to access the information at a computer located at the FOIA office. Reasonable copying services are provided at the fees specified in § 105–60.305.

§ 105–60.302 Available materials.

GSA materials available under this subpart 105–60.3 are as follows:

(a) Final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases.

(b) Those statements and policy and interpretations that have been adopted by GSA and are not published in the FEDERAL REGISTER.

(c) Administrative staff manuals and instructions to staff affecting a member of the public unless these materials are promptly published and copies offered for sale.

§ 105–60.303 Rules for public inspection and copying.

(a) *Locations.* Selected areas containing the materials available for public inspection and copying, described in this § 105–60.302, are located in the following places:

Central Office (GSA Headquarters),
General Services Administration, Washington, DC.
Telephone: 202–501–2262
FAX: 202–501–2727,
Email: gsa.foia@gsa.gov
1800 F Street, NW. (CAI), Washington, DC 20405

Office of the Inspector General
FOIA Officer, Office of Inspector General (J)

General Services Administration
1800 F Street NW., Room 5324
Washington, DC 20405

New England Region

General Services Administration (1AB)
(Comprised of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)
Thomas P. O'Neill, Jr., Federal Building,
10 Causeway Street, Boston, MA 02222
Telephone: 617–565–8100
FAX: 617–565–8101

41 CFR Ch. 105 (7–1–11 Edition)

Northeast and Caribbean Region

(Comprised of the States of New Jersey, New York, the Commonwealth of Puerto Rico, and the Virgin Islands)

General Services Administration (2AR)
26 Federal Plaza, New York, NY 10278
Telephone: 212–264–1234
FAX: 212–264–2760

Mid-Atlantic Region

(Comprised of the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, excluding the Washington, DC metropolitan area)

General Services Administration (3ADS),
100 Penn Square East, Philadelphia, PA 19107

Telephone: 215–656–5530

FAX: 215–656–5590

Southeast Sunbelt Region

(Comprised of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee)

General Services Administration (4E), 401 West Peachtree Street, Atlanta, GA 30365

Telephone: 404–331–5103

FAX: 404–331–1813

Great Lakes Region

(Comprised of the States of Illinois, Indiana, Ohio, Minnesota, Michigan, and Wisconsin)

General Services Administration (5ADB),
230 South Dearborn Street, Chicago, IL 60604

Telephone: 312–353–5383

FAX: 312–353–5385

Heartland Region

(Comprised of the States of Iowa, Kansas, Missouri, and Nebraska)

General Services Administration (6ADB),
1500 East Bannister Road, Kansas City, MO 64131

Telephone: 816–926–7203

FAX: 816–823–1167

Greater Southwest Region

(Comprised of the States of Arkansas, Louisiana, New Mexico, Texas, and Oklahoma)

General Services Administration (7ADQ),
819 Taylor Street, Fort Worth, TX 76102

Telephone: 817–978–3902

FAX: 817–978–4867

Rocky Mountain Region

(Comprised of the States of Colorado, North Dakota, South Dakota, Montana, Utah, and Wyoming)

Business Service Center, General Services Administration (8PB-B), Building 41,
Denver Federal Center, Denver, CO 80225

Telephone: 303–236–7408

FAX: 303–236–7403

Pacific Rim Region

(Comprised of the States of Hawaii, California, Nevada, Arizona, Guam, and Trust Territory of the Pacific)

General Services Administration

§ 105-60.305-1

Business Service Center, General Services Administration (9ADB), 525 Market Street, San Francisco, CA 941105

Telephone: 415-522-2715

FAX: 415-522-2705

Northwest/Arctic Region

(Comprised of the States of Alaska, Idaho, Oregon, and Washington)

General Services Administration (10L), GSA Center, 15th and C Streets, SW., Auburn, WA 98002

Telephone: 206-931-7007

FAX: 206-931-7195

National Capital Region

(Comprised of the District of Columbia and the surrounding metropolitan area)

General Services Administration (WPFA-L), 7th and D Streets SW., Washington, DC 20407

Telephone: 202-708-5854

FAX: 202-708-4655.

(b) *Time.* The offices listed above will be open to the public during the business hours of the GSA office where they are located.

(c) *Reproduction services and fees.* The GSA Central Office or the Regional Business Service Centers will furnish reasonable copying and reproduction services for available materials at the fees specified in § 105-60.305.

§ 105-60.304 Public information handbook and index.

GSA publishes a handbook for the public that identifies information regarding any matter described in § 105-60.302. This handbook also lists published information available from GSA and describes the procedures the public may use to obtain information using the Freedom of Information Act (FOIA). This handbook may be obtained without charge from any of the GSA FOIA offices listed in § 105-60.303(a), or at the GSA Internet Homepage (<http://www.gsa.gov/staff/c/ca/cai/links.htm>).

§ 105-60.305 Fees.

§ 105-60.305-1 Definitions.

For the purpose of this part:

(a) A statute specifically providing for setting the level of fees for particular types of records (5 U.S.C. 552(a)(4)(A)(vii)) means any statute that specifically requires a Government agency to set the level of fees for particular types of records, as opposed to a statute that generally discusses

such fees. Fees are required by statute to:

(1) Make Government information conveniently available to the public and to private sector organizations;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating Government information.

(b) The term *direct costs* means those expenditures which GSA actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing and redacting) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the cost of operating duplicating machinery. Overhead expenses such as costs of space, and heating or lighting the facility where the records are stored are not included in direct costs.

(c) The term *search* includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Searches will be performed in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. Line-by-line searches will not be undertaken when it would be more efficient to duplicate the entire document. *Search* for responsive material is not the same as *review* of a record to determine whether it is exempt from disclosure in whole or in part (see paragraph (e) of this section. Searches may be done manually or by computer using existing programming or new programming when this would not significantly interfere with the operation of the automated system in question.

(d) The term *duplication* means the process of making a copy of a document in response to a FOIA request. Copies can take the form of paper,

§ 105-60.305-2

microform audiovisual materials, or magnetic types or disks. To the extent practicable, GSA will provide a copy of the material in the form specified by the requester.

(e) The term *review* means the process of examining documents located in response to a request to determine if any portion of that document is permitted to be withheld and processing any documents for disclosure. See § 105-60.305-6.

(f) The term *commercial-use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. GSA will determine whether a requester properly belongs in this category by determining how the requester will use the documents.

(g) The term *educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education which operates a program or programs of scholarly research.

(h) The term *noncommercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is used in paragraph (f) of this section and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(i) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists will be regarded as working for a news organization if they can demonstrate a solid

41 CFR Ch. 105 (7-1-11 Edition)

basis for expecting publication through that organization even though they are not actually employed by it.

§ 105-60.305-2 Scope of this subpart.

This subpart sets forth policies and procedures to be followed in the assessment and collection of fees from a requester for the search, review, and reproduction of GSA records.

§ 105-60.305-3 GSA records available without charge.

GSA records available to the public are displayed in the Business Service Center for each GSA region. The address and phone number of the Business Service Centers are listed in § 105-60.303. Certain material related to bids (excluding construction plans and specifications) and any material displayed are available without charge upon request.

§ 105-60.305-4 GSA records available at a fee.

(a) GSA will make a record not subject to exemption available at a time and place mutually agreed upon by GSA and the requester at fees shown in § 105-60.305-10. Waivers of these fees are available under the conditions described in § 105-60.305-13. GSA will agree to:

- (1) Show the originals to the requester;
- (2) Make one copy available at a fee; or
- (3) A combination of these alternatives.

(b) GSA will make copies of voluminous records as quickly as possible. GSA may, in its discretion, make a reasonable number of additional copies for a fee when commercial reproduction services are not available to the requester.

§ 105-60.305-5 Searches.

(a) GSA may charge for the time spent in the following activities in determining "search time" subject to applicable fees as provided in § 105-60.305-10:

- (1) Time spent in trying to locate GSA records which come within the scope of the request;
- (2) Time spent in either transporting a necessary agency searcher to a place

General Services Administration

§ 105-60.305-10

of record storage, or in transporting records to the locations of a necessary agency searcher; and

(3) Direct costs of the use of computer time to locate and extract requested records.

(b) GSA will not charge for the time spent in monitoring a requester's inspection of disclosed agency records.

(c) GSA may assess fees for search time even if the search proves unsuccessful or if the records located are exempt from disclosure.

§ 105-60.305-6 Reviews.

(a) GSA will charge only commercial-use requesters for review time.

(b) GSA will charge for the time spent in the following activities in determining "review time" subject to applicable fees as provided in § 105-60.305-10:

(1) Time spent in examining a requested record to determine whether any or all of the record is exempt from disclosure, including time spent consulting with submitters of requested information; and

(2) Time spent in deleting exempt matter being withheld from records otherwise made available.

(c) GSA will not charge for:

(1) Time spent in resolving issues of law or policy regarding the application of exemptions; or

(2) Review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. GSA will charge for such subsequent review.

§ 105-60.305-7 Assurance of payment.

If fees for search, review, and reproduction will exceed \$25 but will be less than \$250, the requester must provide written assurance of payment before GSA will process the request. If this assurance is not included in the initial request, GSA will notify the requester that assurance of payment is required before the request is processed. GSA will offer requesters an opportunity to modify the request to reduce the fee.

§ 105-60.305-8 Prepayment of fees.

(a) *Fees over \$250.* GSA will require prepayment of fees for search, review, and reproduction which are likely to exceed \$250. When the anticipated total fee exceeds \$250, the requester will receive notice to prepay and at the same time will be given an opportunity to modify his or her request to reduce the fee. When fees will exceed \$250, GSA will notify the requester that it will not start processing a request until payment is received.

(b) *Delinquent payments.* As noted in § 105-6.305-12(d), requesters who are delinquent in paying for previous requests will be required to repay the old debt and to prepay for any subsequent request. GSA will inform the requester that it will process no additional requests until all fees are paid.

§ 105-60.305-9 Form of payment.

Requesters should pay fees by check or money order made out to the General Services Administration and addressed to the official named by GSA in its correspondence. Payment may also be made by means of Mastercard or Visa. For information concerning payment by credit cards, call 816-926-7551.

§ 105-60.305-10 Fee schedule.

(a) When GSA is aware that documents responsive to a request are maintained for distribution by an agency operating a statutory fee based program, GSA will inform the requester of the procedures for obtaining records from those sources.

(b) GSA will consider only the following costs in fees charged to requesters of GSA records:

(1) Review and search fees.

Manual searches by clerical staff: \$13 per hour or fraction of an hour.

Manual searches and reviews by professional staff in cases in which clerical staff would be unable to locate the requested records: \$29 per hour or fraction of an hour.

Computer searches: Direct cost to GSA.

Transportation or special handling of records: Direct cost to GSA.

(2) Reproduction fees.

Pages no larger than 8½ by 14 inches, when reproduced by routine electrostatic copying: 10¢ per page.

Pages over 8½ by 14 inches: Direct cost of reproduction to GSA.

§ 105-60.305-11

Pages requiring reduction, enlargement, or other special services: Direct cost of reproduction to GSA.

Reproduction by other than routine electrostatic copying: Direct cost of reproduction to GSA.

(c) Any fees not provided for under paragraph (b) of this section, shall be calculated as direct costs, in accordance with § 105-60.305-1(b).

(d) GSA will assess fees based on the category of the requester as defined in § 105-60.305-1(f)-(1); i.e., commercial-use, educational and noncommercial scientific institutions, news media, and all other. The fees listed in paragraph (b) of this section apply with the following exceptions:

(1) GSA will not charge the requester if the fee is \$25 or less as the cost of collection is greater than the fee.

(2) Educational and noncommercial scientific institutions and the news media will be charged for the cost of reproduction alone. These requesters are entitled to the first 100 pages (paper copies) of duplication at no cost. The following are examples of how these fees are calculated:

(i) *A request that results in 150 pages of material.* No fee would be assessed for duplication of 150 pages. The reason is that these requesters are entitled to the first 100 pages at no charge. The charge for the remaining 50 pages would be \$5.00. This amount would not be billed under the preceding section.

(ii) *A request that results in 450 pages of material.* The requester in this case would be charged \$35.00. The reason is that the requester is entitled to the first 100 pages at no charge. The charge for the remaining 350 pages would be \$35.

(3) Noncommercial requesters who are not included under paragraph (d)(2) of this section will be entitled to the first 100 pages (page copies) of duplication at not cost and two hours of search without charge. The term *search time* generally refers to manual search. To apply this term to searches made by computer, GSA will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) reaches the

41 CFR Ch. 105 (7-1-11 Edition)

equivalent dollar amount of two hours of the salary of the person performing a manual search, i.e., the operator, GSA will begin assessing charges for computer search.

(4) GSA will charge commercial-use requesters fees which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial-use requesters are not entitled to two hours of free search time.

(e) *Determining category of requester.* GSA may ask any requester to provide additional information at any time to determine what fee category he or she falls under.

§ 105-60.305-11 Fees for authenticated and attested copies.

The fees set forth in § 105-60.305-10 apply to requests for authenticated and attested copies of GSA records.

§ 105-60.305-12 Administrative actions to improve assessment and collection of fees.

(a) *Charging interest.* GSA may charge requesters who fail to pay fees interest on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(b) *Effect of the Debt Collection Act of 1982.* GSA will take any action authorized by the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), including disclosure to consumer reporting agencies, use of collection agencies, and assessment of penalties and administrative costs, where appropriate, to encourage payment.

(c) *Aggregating requests.* When GSA reasonably believes that a requester, or group of requesters acting in concert, is attempting to break down a request into a series of requests related to the same subject for the purpose of evading the assessment of fees, GSA will combine any such requests and charge accordingly, including fees for previous requests where charges were not assessed. GSA will presume that multiple requests of this type within a 30-day period are made to avoid fees.

(d) *Advanced payments.* Whenever a requester is delinquent in paying the fee for a previous request (i.e., within 30 days of the date of the billing), GSA

General Services Administration

§ 105–60.401

will require the requester to pay the full amount owed plus any applicable interest penalties and administrative costs as provided in paragraph (a) of this section or to demonstrate that he or she has, in fact, paid the fee. In such cases, GSA will also require advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When advance payment is required under this selection, the administrative time limits in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of appeals from initial denial plus permissible time extensions) will begin only after GSA has received the fee payments described in § 105–60.305–8.

§ 105–60.305–13 Waiver of fee.

(a) Any request for a waiver or the reduction of a fee should be included in the initial letter requesting access to GSA records under § 105–60.402–1. The waiver request should explain how disclosure of the information would contribute significantly to public's understanding of the operations or activities of the Government and would not be primarily in the commercial interest of the requester. In responding to a requester, GSA will consider the following factors:

(1) Whether the subject of the requested records concerns “the operations or activities of the Government.” The subject matter of the requested records must specifically concern identifiable operations or activities of the Federal Government. The connection between the records and the operations or activities must be direct and clear, not remote or attenuated.

(2) Whether the disclosure is “likely to contribute” to an understanding of Government operations or activities. In this connection, GSA will consider whether the requested information is already in the public domain. If it is, then disclosure of the information would not be likely to contribute to an understanding of Government operations or activities, as nothing new would be added to the public record.

(3) Whether disclosure of the requested information will contribute to “public's understanding.” The focus here must be on the contribution to

public's understanding rather than personal benefit to be derived by the requester. For purposes of this analysis, the identity and qualifications of the requester should be considered to determine whether the requester is in a position to contribute to public's understanding through the requested disclosure.

(4) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so: whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public's interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

(b) GSA will ask the requester to furnish additional information if the initial request is insufficient to evaluate the merits of the request. GSA will not start processing a request until the fee waiver issue has been resolved unless the requester has provided written assurance of payment in full if the fee waiver is denied by the agency.

Subpart 105–60.4—Described Records

§ 105–60.401 General.

(a) Except for records made available in accordance with subparts 105–60.2 and 105–60.3 of this part, GSA will make records available to a requester promptly when the request reasonably describes the records unless GSA invokes an exemption in accordance with subpart 105–60.5 of this part. Although the burden of reasonable description of the records rests with the requester, whenever practical GSA will assist requesters to describe records more specifically.

(b) Whenever a request does not reasonably describe the records requested, GSA may contact the requester to seek a more specific description. The 20-workday time limit set forth in § 105–60.402–2 will not start until the official identified in § 105–60.402–1 or other responding official receives a request reasonably describing the records.

§ 105–60.402

41 CFR Ch. 105 (7–1–11 Edition)

§ 105–60.402 Procedures for making records available.

This subpart sets forth initial procedures for making records available when they are requested, including administrative procedures to be exhausted prior to seeking judicial review by an appropriate United States District Court.

§ 105–60.402–1 Submission of requests.

For records located in the GSA Central Office, the requester must submit a request in writing to the GSA FOIA Officer, General Services Administration (CAD), Washington, DC 20405. Requesters may FAX requests to (202) 501–2727, or submit a request by electronic mail to gsa.foi@gsa.gov. For records located in the Office of Inspector General, the requester must submit a request to the FOIA Officer, Office of Inspector General, General Services Administration, 1800 F Street NW., Room 5324, Washington, DC 20405. For records located in the GSA regional offices, the requester must submit a request to the FOIA Officer for the relevant region, at the address listed in § 105–60.303(a). Requests should include the words “Freedom of Information Act Request” prominently marked on both the face of the request letter and the envelope. The 20-workday time limit for agency decisions set forth in § 105–60.402–2 begins with receipt of a request in the office of the official identified in this section, unless the provisions under §§ 105–60.305–8 and 105–60.305–12(d) apply. Failure to include the words “Freedom of Information Act Request” or to submit a request to the official identified in this section will result in processing delays. A requester with questions concerning a FOIA request should contact the GSA FOIA Office, General Services Administration (CAD), 18th and F Streets, NW., Washington, DC 20405, (202) 501–2262.

§ 105–60.402–2 Response to initial requests.

(a) GSA will respond to an initial FOIA request that reasonably describes requested records, including a fee waiver request, within 20 workdays (that is, excluding Saturdays, Sundays, and legal holidays) after receipt of a request by the office of the appropriate

official specified in § 105–60.402–1. This letter will provide the agency’s decision with respect to disclosure or non-disclosure of the requested records, or, if appropriate, a decision on a request for a fee waiver. If the records to be disclosed are not provided with the initial letter, the records will be sent as soon as possible thereafter.

(b) In unusual circumstances, as described in § 105–60.404, GSA will inform the requester of the agency’s need to take an extension of time, not to exceed an additional 10 workdays. This notice will afford requesters an opportunity to limit the scope of the request so that it may be processed within prescribed time limits or an opportunity to arrange an alternative time frame for processing the request or a modified request. Such mutually agreed time frames will supersede the 10 day limit for extensions.

(c) GSA will consider requests for expedited processing from requesters who submit a statement describing a compelling need and certifying that this need is true and correct to the best of such person’s knowledge and belief. A *compelling need* means:

(1) Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. “Urgently needed” information has a particular value that will be lost if not disseminated quickly, such as a breaking news story or general public interest. Information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the newsbreaking nature of the information.

(d) GSA will decide whether to grant expedited processing within five working days of receipt of the request. If the

General Services Administration

§ 105–60.404

request is granted, GSA will process the request ahead of non-expedited requests, as soon as practicable. If the request is not granted, GSA will give expeditious consideration to administrative appeals of this denial.

(e) GSA may, at its discretion, establish three processing queues based on whether any requests have been granted expedited status and on the difficulty and complexity of preparing a response. Within each queue, responses will be prepared on a “first in, first out” basis. One queue will be made up of expedited requests; the second, of simple responses that clearly can be prepared without requesting an extension of time; the third, of responses that will require an extension of time.

§ 105–60.403 Appeal within GSA.

(a) A requester who receives a denial of a request, in whole or in part, a denial of a request for expedited processing or of a fee waiver request may appeal that decision within GSA. A requester may also appeal the adequacy of the search if GSA determines that it has searched for but has not requested records. The requester must send the appeal to the GSA FOIA Officer, General Services Administration (CAD), Washington, DC 20405, regardless of whether the denial being appealed was made in the Central Office or in a regional office. For denials which originate in the Office of Inspector General, the requester must send the appeal to the Inspector General, General Services Administration, 1800 F Street NW., Washington, DC 20405.

(b) The GSA FOIA Officer must receive an appeal no later than 120 calendar days after receipt by the requester of the initial denial of access or fee waiver.

(c) An appeal must be in writing and include a brief statement of the reasons he or she thinks GSA should release the records or provide expedited processing and enclose copies of the initial request and denial. The appeal letter must include the words “Freedom of Information Act Appeal” on both the face of the appeal letter and on the envelope. Failure to follow these procedures will delay processing of the appeal. GSA has 20 workdays after receipt of a proper appeal of denial of

records to issue a determination with respect to the appeal. The 20-workday time limit shall not begin until the GSA FOIA Officer receives the appeal. As noted in § 105–60.404, the GSA FOIA Officer may extend this time limit in unusual circumstances. GSA will process appeals of denials of expedited processing as soon as possible after receiving them.

(d) A requester who receives a denial of an appeal, or who has not received a response to an appeal or initial request within the statutory time frame may seek judicial review in the United States District Court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the United States District Court for the District of Columbia.

§ 105–60.404 Extension of time limits.

(a) In unusual circumstances, the GSA FOIA Officer or the regional FOIA Officer may extend the time limits prescribed in §§ 105–60.402 and 105–60.403. For purposes of this section, the term *unusual circumstances* means:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are described in a single request;

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of GSA having substantial subject-matter interest therein; or

(4) The need to consult with the submitter of the requested information.

(b) If necessary, GSA may take more than one extension of time. However, the total extension of time to respond to any single request shall not exceed 10 workdays. The extension may be divided between the initial and appeal stages or within a single stage. GSA will provide written notice to the requester of any extension of time limits.

§ 105–60.405 Processing requests for confidential commercial information.

(a) *General.* The following additional procedures apply when processing requests for confidential commercial information.

(b) *Definitions.* For the purposes of this section, the following definitions apply:

(1) *Confidential commercial information* means records provided to the Government by a submitter that contain material arguably exempt from release under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means a person or entity which provides to the Government information which may constitute confidential commercial information. The term *submitter* includes, but is not limited to, individuals, partnerships, corporations, State governments, and foreign governments.

(c) *Designating confidential commercial information.* Since January 1, 1988, submitters have been required to designate confidential commercial information as such when it is submitted to GSA or at a reasonable time thereafter. For information submitted in connection with negotiated procurements, the requirements of Federal Acquisition Regulation 48 CFR 15.407(c)(8) and 52.215–12 also apply.

(d) *Procedural requirements—consultation with the submitter.* (1) If GSA receives a FOIA request for potentially confidential commercial information, it will notify the submitter immediately by telephone and invite an opinion whether disclosure will or will not cause substantial competitive harm.

(2) GSA will follow up the telephonic notice promptly in writing before releasing any records unless paragraph (f) of this section applies.

(3) If the submitter indicates an objection to disclosure GSA will give the submitter seven workdays from receipt of the letter to provide GSA with a detailed written explanation of how disclosure of any specified portion of the records would be competitively harmful.

(4) If the submitter verbally states that there is no objection to disclosure,

GSA will confirm this fact in writing before disclosing any records.

(5) At the same time GSA notifies the submitter, it will also advise the requester that there will be a delay in responding to the request due to the need to consult with the submitter.

(6) GSA will review the reasons for nondisclosure before independently deciding whether the information must be released or should be withheld. If GSA decides to release the requested information, it will provide the submitter with a written statement explaining why his or her objections are not sustained. The letter to the submitter will contain a copy of the material to be disclosed or will offer the submitter an opportunity to review the material in none of GSA's offices. If GSA decides not to release the material, it will notify the submitter orally or in writing.

(7) If GSA determines to disclose information over a submitter's objections, it will inform the submitter the GSA will delay disclosure for 5 workdays from the estimated date the submitter receives GSA's decision before it releases the information. The decision letter to the requester shall state that GSA will delay disclosure of material it has determined to disclose to allow for the notification of the submitter.

(e) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, GSA will notify a submitter whenever it receives a FOIA request for such information:

(i) If the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) If GSA has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted on or after January 1, 1988, GSA will notify a submitter whenever it determines that the agency may be required to disclose records:

(i) That the submitter has previously designated as privileged or confidential; or

(ii) That GSA believes could reasonably be expected to cause substantial competitive harm if disclosed.

(3) GSA will provide notice to a submitter for a period of up to 10 years after the date of submission.

(f) *When notice is not required.* The notice requirements of this section will not apply if:

(1) GSA determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law other than the FOIA;

(4) Disclosure is required by an agency rule that

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the agency that are to be released under FOIA; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted for a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The information is not designated by the submitter as exempt from disclosure under paragraph (c) of this section, unless GSA has substantial reason to believe that disclosure of the information would be competitively harmful; or

(6) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such cases, the agency must provide the submitter with written notice of any final administrative decision five workdays prior to disclosing the information.

(g) *Lawsuits.* If a FOIA requester sues the agency to compel disclosure of confidential commercial information, GSA will notify the submitter as soon as possible. If the submitter sues GSA to enjoin disclosure of the records, GSA will notify the requester.

Subpart 105–60.5—Exemptions

§ 105–60.501 Categories of records exempt from disclosure under the FOIA.

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) Specifically authorized under the criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

(i) could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential

§ 105–60.501

41 CFR Ch. 105 (7–1–11 Edition)

source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) GSA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section. If GSA must delete information from a record before disclosing it, this information, and the reasons for withholding it, will be clearly described in the cover letter to the requester or in an attachment. Unless indicating the extent of the deletion would harm an interest protected by an exemption, the amount of deleted information shall be indicated on the released portion of paper records by use of brackets or darkened areas indicating removal of information. In the case of electronic deletion, the amount of redacted information shall be indicated at the place in the record where such deletion was made, unless including the indication would harm an interest protected by the exemption under which the exemption was made.

(c) GSA will invoke no exemption under this section to deny access to records that would be available pursuant to a request made under the Pri-

vacy Act of 1974 (5 U.S.C. 552a) and implementing regulations, 41 CFR part 105–64, or if disclosure would cause no demonstrable harm to any governmental or private interest.

(d) Pursuant to National Defense Authorization Act of Fiscal Year 1997, Pub. L. No. 104–201, section 821, 110 Stat. 2422, GSA will invoke Exemption 3 to deny access to any proposal submitted by a vendor in response to the requirements of a solicitation for a competitive proposal unless the proposal is set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal.

(e) Whenever a request is made which involves access to records described in § 105–60.501(a)(7)(i) and the investigation or proceeding involves a possible violation of criminal law, and there is reason to believe that the subject of the investigation or proceeding is not aware of it, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(f) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(g) Whenever a request is made that involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in paragraph (a)(1) of this section, the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

Subpart 105–60.6—Production or Disclosure by Present or Former General Services Administration Employees in Response to Subpoenas or Similar Demands in Judicial or Administrative Proceedings

§ 105–60.601 Purpose and scope of subpart.

(a) By virtue of the authority vested in the Administrator of General Services by 5 U.S.C. 301 and 40 U.S.C. 486(c) this subpart establishes instructions and procedures to be followed by current and former employees of the General Services Administration in response to subpoenas or similar demands issued in judicial or administrative proceedings for production or disclosure of material or information obtained as part of the performance of a person's official duties or because of the person's official status. Nothing in these instructions applies to responses to subpoenas or demands issued by the Congress or in Federal grand jury proceedings.

(b) This subpart provides instructions regarding the internal operations of GSA and the conduct of its employees, and is not intended and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against GSA.

§ 105–60.602 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Material* means any document, record, file or data, regardless of the physical form or the media by or through which it is maintained or recorded, which was generated or acquired by a current or former GSA employee by reason of the performance of that person's official duties or because of the person's official status, or any other tangible item, e.g., personal property possessed or controlled by GSA.

(b) *Information* means any knowledge or facts contained in material, and any knowledge or facts acquired by current or former GSA employee as part of the performance of that person's official

duties or because of that person's official status.

(c) *Demand* means any subpoena, order, or similar demand for the production or disclosure of material, information or testimony regarding such material or information, issued by a court or other authority in a judicial or administrative proceeding, excluding congressional subpoenas or demands in Federal grand jury proceedings, and served upon a present or former GSA employee.

(d) *Appropriate authority* means the following officials who are delegated authority to approve or deny responses to demands for material, information or testimony:

(1) The Counsel to the Inspector General for material and information which is the responsibility of the GSA Office of Inspector General or testimony of current or former employees of the Office of the Inspector General;

(2) The Counsel to the GSA Board of Contract Appeals for material and information which is the responsibility of the Board of Contract Appeals or testimony of current or former Board of Contract Appeals employees;

(3) The GSA General Counsel, Associate General Counsel(s) or Regional Counsel for all material, information, or testimony not covered by paragraphs (d)(1) and (2) of this section.

§ 105–60.603 Acceptance of service of a subpoena duces tecum or other legal demand on behalf of the General Services Administration.

(a) The Administrator of General Services and the following officials are the only GSA personnel authorized to accept service of a subpoena or other legal demand on behalf of GSA: The GSA General Counsel and Associate General Counsel(s) and, with respect to material or information which is the responsibility of a regional office, the Regional Administrator and Regional Counsel. The Inspector General and Counsel to the Inspector General, as well as the Chairman and Vice Chairman of the Board of Contract Appeals, are authorized to accept service for material or information which are the responsibility of their respective organizations.

§ 105-60.604

41 CFR Ch. 105 (7-1-11 Edition)

(b) A present or former GSA employee not authorized to accept service of a subpoena or other demand for material, information or testimony obtained in an official capacity shall respectfully inform the process server that he or she is not authorized to accept service on behalf of GSA and refer the process server to an appropriate official listed in paragraph (a) of this section.

(c) A Regional Administrator or Regional Counsel shall notify the General Counsel of a demand which may raise policy concerns or affect multiple regions.

§ 105-60.604 Production or disclosure prohibited unless approved by the Appropriate Authority.

No current or former GSA employee shall, in response to a demand, produce any material or disclose, through testimony or other means, any information covered by this subpart, without prior approval of the Appropriate Authority.

§ 105-60.605 Procedure in the event of a demand for production or disclosure.

(a) Whenever service of a demand is attempted in person or via mail upon a current or former GSA employee for the production of material or the disclosure of information covered by this subpart, the employee or former employee shall immediately notify the Appropriate Authority through his or her supervisor or his or her former service, staff office, or regional office. The supervisor shall notify the Appropriate Authority. For current or former employees of the Office of Inspector General located in regional offices, Counsel to the Inspector General shall be notified through the immediate supervisor or former employing field office.

(b) The Appropriate Authority shall require that the party seeking material or testimony provide the Appropriate Authority with an affidavit, declaration, statement, and/or a plan as described in paragraphs (c) (1), (2), and (3) of this section if not included with or described in the demand. The Appropriate Authority may waive this requirement for a demand arising out of proceedings to which GSA or the

United States is a party. Any waiver will be coordinated with the United States Department of Justice (DOJ) in proceedings in which GSA, its current or former employees, or the United States are represented by DOJ.

(c)(1) Oral testimony. If oral testimony is sought by a demand, the Appropriate Authority shall require the party seeking the testimony or the party's attorney to provide, by affidavit or other statement, a detailed summary of the testimony sought and its relevance to the proceedings. Any authorization for the testimony of a current or former GSA employee shall be limited to the scope of the demand as summarized in such statement or affidavit.

(2) Production of material. When information other than oral testimony is sought by a demand, the Appropriate Authority shall require the party seeking production or the party's attorney to provide a detailed summary, by affidavit or other statement, of the information sought and its relevance to the proceeding.

(3) The Appropriate Authority may require a plan or other information from the party seeking testimony or production of material of all demands reasonably foreseeable, including, but not limited to, names of all current and former GSA employees from whom testimony or production is or will likely be sought, areas of inquiry, for current employees the length of time away from duty anticipated, and identification of documents to be used in each deposition or other testimony, where appropriate.

(d) The Appropriate Authority will notify the current or former employee, the appropriate supervisor, and such other persons as circumstances may warrant, whether disclosure or production is authorized, and of any conditions or limitations to disclosure or production.

(e) Factors to be considered by the Appropriate Authority in responding to demands:

(1) Whether disclosure or production is appropriate under rules of procedure governing the proceeding out of which the demand arose;

(2) The relevance of the testimony or documents to the proceedings;

General Services Administration

§ 105-60.607

(3) The impact of the relevant substantive law concerning applicable privileges recognized by statute, common law, judicial interpretation or similar authority;

(4) The information provided by the issuer of the demand in response to requests by the Appropriate Authority pursuant to paragraphs (b) and (c) of this section;

(5) The steps taken by the issuer of the demand to minimize the burden of disclosure or production on GSA, including but not limited to willingness to accept authenticated copies of material in lieu of personal appearance by GSA employees;

(6) The impact on pending or potential litigation involving GSA or the United States as a party;

(7) In consultation with the head of the GSA organizational component affected, the burden on GSA which disclosure or production would entail; and

(8) Any additional factors unique to a particular demand or proceeding.

(f) The Appropriate Authority shall not approve a disclosure or production which would:

(1) Violate a statute or a specific regulation;

(2) Reveal classified information, unless appropriately declassified by the originating agency;

(3) Reveal a confidential source or informant, unless the investigative agency and the source or informant consent;

(4) Reveal records or information compiled for law enforcement purposes which would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would be impaired;

(5) Reveal trade secrets or commercial or financial information which is privileged or confidential without prior consultation with the person from whom it was obtained; or

(6) Be contrary to a recognized privilege.

(g) The Appropriate Authority's determination, including any reasons for denial or limitations on disclosure or production, shall be made as expeditiously as possible and shall be communicated in writing to the issuer of the demand and appropriate current or former GSA employee(s). In pro-

ceedings in which GSA, its current or former employees, or the United States are represented by DOJ, the determination shall be coordinated with DOJ which may respond to the issuer of the subpoenas or demand in lieu of the Appropriate Authority.

§ 105-60.606 Procedure where response to demand is required prior to receiving instructions.

(a) If a response to a demand is required before the Appropriate Authority's decision is issued, a GSA attorney designated by the Appropriate Authority for the purpose shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the judicial or other authority with a copy of the instructions contained in this subpart. The attorney shall inform the court or other authority that the demand has been or is being referred for the prompt consideration by the Appropriate Authority. The attorney shall respectfully request the judicial or administrative authority to stay the demand pending receipt of the requested instructions.

(b) The designated GSA attorney shall coordinate GSA's response with DOJ's Civil Division or the relevant Office of the United States Attorney and may request that a DOJ or Assistant United States Attorney appear with the employee in addition to or in lieu of a designated GSA attorney.

(c) If an immediate demand for production or disclosure is made in circumstances which preclude the appearance of a GSA or DOJ attorney on the behalf of the employee or the former employee, the employee or former employee shall respectfully make a request to the demanding authority for sufficient time to obtain advice of counsel.

§ 105-60.607 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 105-60.606 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions by the Appropriate Authority not to produce the material or

§ 105–60.608

disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply, citing these instructions and the decision of the United States Supreme Court in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

§ 105–60.608 Fees, expenses, and costs.

(a) In consultation with the Appropriate Authority, a current employee who appears as a witness pursuant to a demand shall ensure that he or she receives all fees and expenses, including travel expenses, to which witnesses are entitled pursuant to rules applicable to the judicial or administrative proceedings out of which the demand arose.

(b) Witness fees and reimbursement for expenses received by a GSA employee shall be disposed of in accordance with rules applicable to Federal employees in effect at the time.

(c) Reimbursement to the GSA for costs associated with producing material pursuant to a demand shall be determined in accordance with rules applicable to the proceedings out of which the demand arose.

PART 105–62—DOCUMENT SECURITY AND DECLASSIFICATION

Sec.

105–62.000 Scope of part.

Subpart 105.62.1—Classified Materials

105–62.101 Security classification categories.

105–62.102 Authority to originally classify.

105–62.103 Access to GSA-originated materials.

Subpart 105–62.2—Declassification and Downgrading

105–62.201 Declassification and downgrading.

105–62.202 Review of classified materials for declassification purposes.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); and E.O. 12065 dated June 28, 1978.

SOURCE: 44 FR 64805, Nov. 8, 1979, unless otherwise noted.

§ 105–62.000 Scope of part.

This part prescribes procedures for safeguarding national security infor-

41 CFR Ch. 105 (7–1–11 Edition)

mation and material within GSA. They explain how to identify, classify, downgrade, declassify, disseminate, and protect such information in the interests of national security. They also supplement and conform with Executive Order 12065 dated June 28, 1978, subject: National Security Information, and the Implementing Directive dated September 29, 1978, issued through the Information Security Oversight Office.

Subpart 105–62.1—Classified Materials

§ 105–62.101 Security classification categories.

As set forth in Executive Order 12065, official information or material which requires protection against unauthorized disclosure in the interests of the national defense or foreign relations of the United States (hereinafter collectively termed “national security”) shall be classified in one of three categories: Namely, Top Secret, Secret, or Confidential, depending on its degree of significance to the national security. No other categories shall be used to identify official information or material as requiring protection in the interests of national security except as otherwise expressly provided by statute. The three classification categories are defined as follows:

(a) *Top Secret*. Top Secret refers to that national security information which requires the highest degree of protection, and shall be applied only to such information as the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Examples of exceptionally grave damage include armed hostilities against the United States or its allies, disruption of foreign relations vitally affecting the national security, intelligence sources and methods, and the compromise of vital national defense plans or complex cryptologic and communications systems. This classification shall be used with the utmost restraint.

(b) *Secret*. Secret refers to that national security information or material which requires a substantial degree of protection, and shall be applied only to such information as the unauthorized

This Page Intentionally Left Blank

GSA Order Delegation of Authority

Dated November 16, 2012.

**GENERAL SERVICES ADMINISTRATION
Washington, DC 20417**

**ADM 5450.xxx
November 16, 2012**

GSA Order

SUBJECT: Freedom of Information Act Delegation of Authority

1. **Purpose.** This order covers handling of requests made pursuant to the Freedom of Information Act (FOIA).
2. **Cancellation.** ADM 5450.159, Delegation of Authority, issued February 3, 2012, is cancelled.
3. **Background.** ADM 5450.159, dated February 3, 2012, delegated authority to release or deny information under FOIA to Heads of Services and Staff Offices and Regional Administrators, allowing further delegation only to the Counsel to the Inspector General and Chief Counsel of the Civilian Board of Contract Appeals. The Chief FOIA Officer was the appellate authority for non-Office of Inspector General FOIA appeals, with the Chief People Officer as the alternate appellate authority if the Chief FOIA Officer decided the initial FOIA request.
4. **Delegation of Authority.** Effective immediately, Heads of Services and Staff Offices and Regional Administrators are no longer delegated authority to make release and denial decisions for initial FOIA requests, including associated decisions regarding fee waivers and expedited processing requests. This authority is delegated to the Inspector General and Chairman of the Civilian Board of Contract Appeals, for requests for records under their respective purviews, and to the Chief Administrative Services Officer for all other FOIA requests submitted to GSA. The Inspector General may further delegate this authority to Counsel to the Inspector General, and the Chairman of the Civilian Board of Contract Appeals may further delegate this authority to the Chief Counsel of the Civilian Board of Contract Appeals. The Chief Administrative Services Officer may further delegate this authority to the staff of the FOIA Requester Service Center.

Authority to decide FOIA appeals is delegated to the Inspector General for all Inspector General related matters, to the Chairman of the Civilian Board of Contract Appeals for all Civilian Board of Contract Appeals matters, and to the Chief Administrative Services Officer in the Office of Administrative Services for all other GSA FOIA appeals. In the event the Chief Administrative Services Officer made the initial determination that is the subject of the appeal, the Chief People Officer will decide the appeal.
5. **Chief FOIA Officer.** Pursuant to the requirement in the FOIA, 5 U.S.C. 552(j), the Chief Administrative Services Officer is designated as GSA's Chief FOIA Officer and is responsible for performing all the duties listed in the FOIA that are associated with that position, 5 U.S.C. 552(k).

6. Implementing Actions. The Chief People Officer, in conjunction with other appropriate officials, shall take all necessary actions to implement this order. The GSA Delegations of Authority Manual will be updated at a later date.

(b)(6)

A large black rectangular redaction box covers the signature of the Acting Administrator.

Dan Tangherlini
Acting Administrator

Nov. 16, 2012

Date

This Page Intentionally Left Blank

FOIA Handbook and Desktop Manual

Dated October 2015

Under Revision



U.S. General Services Administration

Desktop FOIA Manual

Updated October 2015

This manual has been prepared to provide assistance and guidance for the GSA FOIA process. This manual is not a substitute for legal advice and any legal related questions should be directed to the Office of General Counsel (OGC).

This manual accompanies and is not a substitution the GSA FOIA Regulations. GSA's FOIA regulations 41 CFR 105-60 are posted at:

<http://cfr.regstoday.com/41cfr105-60.aspx>.

Also, The United States Department of Justice Guide to the Freedom of Information Act is available online at: <http://www.justice.gov/oip/foia-guide.html>.

TABLE OF CONTENTS

Background	Page 5
History of the Freedom of Information Act	Page 6
Who Can Submit a FOIA Request?	Page 6
FOIA Requests	Page 6
Understanding the Process	Page 9
Roles and Responsibilities	Page 9
FOIA Requester Service Center	Page 9
Subject Matter Experts	Page 10
HSSO's and Regional Administrators (RA)/Regional Commissioners	Page 11
Processing Initial FOIA Requests	Page 11
Acknowledgment and Tracking	Page 11
Timeframe	Page 13
Extension	Page 13
Fees and Payments	Page 14
Searching and Compiling Records	Page 16
Conducting and Adequate Search	Page 16
Providing Records in the Format Requested	Page 16
Search for Electronic Records	Page 17
Redactions and Exemptions	Page 18
The "Reasonably Segregable" Requirement	Page 20
Redacting the Records	Page 20

FOIA Record Referrals	Page21
Interagency FOIA Consultations	Page22
Considering Business Submitter Rights	Page23
Writing a Response	Page25
Appeal Rights Language in Letters of Denial	Page26
Clearance Process	Page27
Processing Appeals	Page28
Time Limits for Appeals	Page29
Time Extension for Appeals	Page29
Preparing the Administrative Appeal Letter	Page29
Appendix	Page31

BACKGROUND

The Freedom of Information Act (FOIA) grants the public access to information possessed by government agencies. (5 U.S.C. § 552, As Amended By Public Law No. 110-175, 121 Stat. 2524, and Public Law No. 111-83, § 564, 123 Stat. 2142, 2184). Upon written request, U.S. government agencies are required to release information unless the information falls under one of nine exemptions listed in the Act. All Executive Branch departments, agencies and offices, federal regulatory agencies and federal corporations are subject to the Freedom of Information Act. However, the FOIA does not apply to Congress, federal courts and the parts of the Executive Office of the President that serve only to advise and assist the President. The FOIA is enforceable in a court of law.

In FY 2013, the FOIA Program at the General Services Administration (GSA) was consolidated and centralized in order to ensure additional oversight and control over the FOIA process, including further tracking and electronic management of each FOIA response; ensuring compliance with statutory time limits; increasing the quality and consistency of agency response letters; as well as improving coordination with different offices throughout GSA. This shift towards a centralized FOIA process fundamentally changed previously existing roles and responsibilities of the GSA FOIA Program, as well as all the Services/Staff Offices and Regional Offices.

The purpose of this desk guide and the accompanying GSA FOIA Service Level Expectations is to ensure greater understanding of the required processes, explain the procedures, duties, responsibilities and associated actions to effectively and efficiently execute FOIA requests between the OAS, FOIA Requester Service Center and its GSA counterparts within the statutory time limits set forth by the Department of Justice (DOJ).

History of the Freedom of Information Act (FOIA)

The Freedom of Information Act (FOIA) establishes the right of public access to General Services Administration (GSA) records. Upon receipt of a request for GSA records, those records must be disclosed unless they are protected by at least one of the nine categories of exempt information contained in the FOIA. Both the FOIA and GSA regulations contain rules and procedures that must be followed.

The Freedom of Information Act established that records of the Executive Branch of the United States Government are accessible to the people. This was not always the policy regarding federal information disclosure. Before the FOIA was enacted in 1966, the burden was on the individual to establish a right to examine Government records.

With the passage of the FOIA, the burden of proof shifted from the individual to the government. Those seeking information are no longer required to show a need for information. Instead, the “need to know” standard has now been replaced by a “right to know” standard. The government now has to justify the withholding of requested records.

The FOIA sets standards for determining which records must be made available for public inspection and which records can be withheld from disclosure. The law also provides administrative and judicial remedies for those denied access to records. Above all, the statute requires federal agencies to provide the fullest possible disclosure of information to the public.

Who Can Submit a FOIA Request?

Any person can make a request for GSA records – individuals, foreign citizens, partnerships, corporations, associations and foreign, state or local governments, universities, federal or state penitentiary inmates and not for profit organizations. Federal agencies and fugitives are prohibited from making a FOIA request. Federal employees who wish to submit a FOIA must do so as a private citizen representing themselves and not in their capacities as a federal employee. Federal Agencies cannot legally submit a FOIA request to another Federal Agency.

Requesters are treated equally under the FOIA; however, distinctions are made between requesters in order to identify their user category. User categories become a factor when determining the fees associated with processing requests.

FOIA Requests

The FOIA process is initiated by the Requester when he or she makes a request to the agency. The FOIA Requester Service Center is the office that oversees FOIA requests for all of GSA. All requests should be submitted to this office via FOIAonline (<https://foiaonline.regulations.gov/>). If it is not possible for a requester to submit an electronic request, it can be sent by U.S. Postal Service

to Freedom of Information Requester Service Center Act Officer (H1C), U.S. General Services Administration, 1800 F St. NW, Room 7308, Washington, DC 20405.

For a request to be processed by the FOIA Requester Service Center it must meet the following conditions:

- (1) The request must be provided in writing. Requests may be submitted via FOIAonline at <https://foiaonline.regulations.gov> or via email at (gsa.foia@gsa.gov), and/or via fax at (202) 501-2727.
- (2) The requester must provide in writing the following items of contact information:
Full name with surname (Mr., Ms., Mrs., Dr., etc.)
Complete mailing address,
personal/business email address,
phone number.
- (3) The request must be for existing GSA "agency records" that can be located in agency files, including archived and non-destruction schedule records stored at National Archives and Records Administration) NARA.

"Agency records" are those created or received in the course of conducting agency business, including paper, electronic or other physical forms. They include reports, letters, photographs, recordings, emails, etc. A record must exist and be in the possession and control of the agency before it is considered for release.

The following are not considered agency records:

- (A) Objects (furniture, wall paintings, etc)
- (B) Non-tangibles (an individual's memory or oral communications)
- (C) Personal records of an individual that are:
 - i. Maintained for the convenience of the employee, and
 - ii. Not subject to record retention and disposal rules
- (D) Private material brought into agency for employee's reference
- (E) Notes created by supervisors and other employees provided they are:

- i. Not filed with official records; and
 - ii. Not shared with other employees; and
 - iii. Not required by law, regulation, or custom to be created
 - iv. Not used in the decision making process.
- (4) Describe the records being requested in sufficient detail to help an employee clearly identify the correct records. The description should include, at the very least, the subject matter, date or timeframe, and if known, the component of GSA housing the records.
- (5) State which format is preferred to receive the response. All records provided to the requester will be in electronic format, unless stated otherwise. If the file containing the responsive records is too large to transmit through email, the information will be provided on a compact disk or USB flash drive and mailed to the requester.
- (6) Include information that will enable the FOIA Requester Service Center to determine the user category for fee related purposes (i.e. brief background on who is requesting the records, what the intent is with the records).
- (7) Include a firm agreement from the requester to pay fees for search, duplication or review, as appropriate. The requester may submit a request for a waiver or reduction of fees, along with justification of how such a waiver request meets the criteria for a waiver or reduction of fees found in the statute at 5 U.S.C. §552(a)(4)(A)(iii). Once the fees are agreed upon, they must be paid in full before the responsive records will be released to the requester.

According to 5. U.S.C. FOIA Code FOIA does not require Federal Agencies to:

- (1) Answer questions or interrogatories posed as FOIA requests;
- (2) Issue opinions;
- (3) Analyze and/or interpret documents for a requester;
- (4) Create records;
- (5) Conduct research;
- (6) Initiate investigations; or

- (7) Provide statutes, regulations, publications or other documents that are otherwise made available to the public.

Understanding the Process

Roles and Responsibilities

FOIA Requester Service Center

**Please reference GSA FOIA Service Level Expectations documents for specific Roles and Responsibilities and timeframes.*

The FOIA Requester Service Center is responsible for managing requests from the time the request is received until the time a response is provided to the requester.

Upon receiving a request, the FOIA Requester Service Center determines whether the information resides within GSA or another agency. If GSA is not the owner of the information, then the FOIA Requester Service Center enters the request into FOIAonline and sends a referral to the Agency which owns the documents. The FOIA Requester Service Center then sends a letter to the requester indicating that this action has been taken.

If GSA has the information, then the FOIA Requester Service Center enters the request into the FOIAonline system and uploads a copy of the original request. The FOIA Requester Service Center then sends an acknowledgment letter to the requester informing them of this action.

The FOIA Requester Service Center will then determine which business line is most likely responsible for the records being requested. After determining the appropriate business line, they will work with the business line to determine a Subject Matter Expert (SME) who is highly familiar with the subject matter of the request. The FOIA Requester Service Center will work in coordination with the Subject Matter Expert to determine the scope, timeframes, and fees involved with completing the request.

After assigning the request, the FOIA Requester Service Center monitors the request to ensure it is moving efficiently through the process. To accomplish this, the FOIA Requester Service Center provides assistance to the information gatherers/subject matter experts. The FOIA Requester Service Center maintains communication with the requester regarding status updates, clarifications, due dates, and extensions. The FOIA Requester Service Center is also responsible for fee waiver requests, expedited processing requests, and approving final fees presented to requesters.

Finally, once the package is ready for the FOIA Requester Service Center to review, the SME should close the task assigned through FOIAonline or email to their Central Office FOIA point of contact. The FOIA Requester Service Center then reviews the proposed final package to make sure it is appropriate, responsive and complete. This process includes: reviewing the documents to make sure all redactions are properly noted in the letter, reviewing the letter to make sure it explains what is included in the mailing, what is being withheld, and why we are withholding those items. The FOIA Requester Center also reviews the letter for grammatical errors, misspellings and to make sure the response is standardized. The FOIA Requester Service Center also reviews the package to ensure that all appropriate concurrences have occurred before release and obtain signatures on all final FOIA packages (including those with redactions). Proper concurrences include appropriate Business Line Supervisors, as well as Office of General Counsel approval. For FOIA request responses that contain specialty information regarding people or finances, the response package must be reviewed by those source offices (i.e. Office of Human Resources and/or the Office of the Chief Financial Officer) prior to Office of General Counsel concurrence. For example Bonuses, travel expenses, etc. must be concurred on by OCFO).

Finally, once the package is ready, the FOIA Requester Service Center releases the material to the requester via FOIAonline or US postal mail.

Subject Matter Experts (SME)

The SME is primarily responsible for searching and compiling records, making proposed redactions, and explaining why the redactions were made. The SME typically works within a regional office or central office business line. He or she will be responsible for the "hands-on" work involved in gathering information and creating a response. The SME is responsible for searching, examining, proposing redactions, and drafting responses to requests that fall under their area of expertise, as well as drafting the response letter to the requester for submission to the FOIA Requester Center. The FOIA Requester Service Center provides the SME with leadership, guidance, instruction and assistance on all aspects of preparing the FOIA request response package. Response letter templates are provided and guidance and training is provided on required actions such as redactions of withheld information.

As is necessary, the SME works with the FOIA Requester Center and the FOIA requester to coordinate and submit for approval from the FOIA Requester Service Center the following: any necessary clarifications of the request, timeframes for completing requests, extension requests, and any applicable costs (if applicable). Additionally, the SME also works directly with the subcontractors to negotiate the redactions of their documents if necessary.

HSSO's and Regional Administrators/Regional Commissioners (RA/RC)

All senior executives continue to be responsible for ensuring timely and accurate gathering of all responsive FOIA materials and for maintaining oversight of FOIAs assigned to their respective business lines and/or regional offices.

HSSOs and RA/RCs will receive FOIA notices with upcoming due dates, as well as continuing to receive weekly overdue reports to ensure that they are fully aware of all late items within their respective business lines/offices.

Responsibilities include ensuring that the following occur in a complete and timely fashion:

- (1) Notifying the FOIA Requester Service Center if a request comes directly to a business line or regional office. This will allow the FOIA Requester Service Center to open the request in FOIAonline and initiate the process.
- (2) Working in coordination with FOIA Requester Service Center to assign a Subject Matter Expert (SME) to gather the documents responsive to the request.
- (3) Obtaining the concurrence of the Office of the General Counsel staff assigned to the organization on all proposed redactions.
- (4) Verifying that the final responsive documents are complete and without errors. It is critical that an HSSO or RA/RC, are aware of proposed responses as well as the status of the response.
- (5) Ensuring that the internal deadlines for preparing the proposed FOIA response package are met.
- (6) Uploading the responsive documents into FOIAonline (both Redacted and Unreacted Versions). This step must occur at least two (3) days prior to the FOIA due date; five (5) days prior to the due date if it is a Press FOIA.

PROCESSING INITIAL FOIA REQUESTS

Acknowledgement and Tracking

Upon receipt of a request not directly entered by the requester into FOIAonline (i.e. email, fax, US mail, etc.) the FOIA Requester Service Center will immediately upload the request into the FOIAonline system (see Appendix section titled "Getting Started") under the "Attached

Supporting Files” tab. Once the request is entered, the system will generate a tracking number which will allow for easy identification of each request. The system will generate an estimated date for when the response is required to be completed.

The FOIA Requester Service Center determines whether the information requested resides with GSA or with another agency. After this initial determination that the request belongs with GSA and not another agency, an acknowledgment letter will be sent to the requester by the FOIA Requester Service Center within 48 hours of receiving the request. The acknowledgement will provide the tracking number for the request and contact information for his or her FOIA Requester Service Center point of contact for any questions that may arise throughout the process.

Throughout each step of the process, the FOIA Requester Service Center is responsible for noting important information by using either a step note or informational copy. An information copy, or task allows one person to send the information to one or multiple persons through the FOIAonline system. However, the Subject Matter Expert also has this primary responsibility for the documents they have custody of and the documents that will be contained in the FOIA response package. Having all the steps and documents related to a request within one system allows all aspects of the process to be tracked, documented and provides accountability and reference in case of during a an appeal or litigation.

Uploaded documents should appear in the case file tab of FOIAonline. Documents that must be included under the **CASE FILE** tab within FOIAonline are:

- (1) Incoming Request (only if submitted by written letter or email)
- (2) Any and all relevant correspondence between the requester, FOIA Requester Service Center, SME, legal, submitter, subcontractor, etc. (restricted material tab)
- (3) All concurrences of information
- (4) Fee Sheet
- (5) Original and redacted documents
- (6) Draft response letter
- (7) Final response letter

Once the information has been uploaded into FOIAonline, the SME must close out the assigned task. Once the task is closed by the SME the FOIA Requester Service Center will receive a notification from the FOIAonline system. Once the FOIA Requester Service Center has reviewed the response and deemed the request as complete and final, the FOIA Requester Service Center will upload the final signed letter and attach the responsive documents in the Case File tab in

FOIAonline and provide formal response to the requester. Lastly, the FOIA Requester Service Center must ensure collection of any remaining fees or payments and then close out the response in the FOIAonline system.

Timeframe

Once a completed, accurate and final perfected request is received, it can begin to be processed by the GSA FOIA Requester Service Center. FOIA regulations state that GSA has 20 business days to issue a response to the requester, excluding Saturdays, Sundays, and legal holidays. This time period generally begins when the request is received by the FOIA Requester Service Center. If a request was misdirected, the receiving office of the request should inform the FOIA Requester Service Center and if known provide the appropriate office the request should be routed to along with a contact person. If GSA takes more than ten days to route the request to the appropriate office, the twenty-day time period begins to run at that point, even if the appropriate office has not yet received the request. An agency is not required to send the releasable documents to the requester by the last business day; but it is required to reach out to the FOIA requester to notify and inform of GSA's decision and then send the requester the documents within a reasonable time and or negotiated timeframe based on scope and level of effort to prepare the FOIA request response.

10 Day Extension

Under FOIA, GSA may extend the twenty-day response time for an additional one -time only ten business day extension when "unusual circumstances" exist, including the following situations:

- (1) The employee processing the response needs to search and collect records from field offices;
- (2) The request requires the examination of a large amount of records;
- (3) There is a need to consult others that have a substantial interest in the request, including other components of GSA, other agencies, or the submitter of the records being examined.

The business line responsible for handling the request should review the subject matter of the request and determine if more than 20 business days will be needed to issue a response. If so, the business line needs to contact the FOIA Requester Service Center as soon as possible to get approval for the extension. The FOIA Requester Service Center is the only office within GSA that can approve or deny FOIA extensions and sign off on the responses.

An approved extension allows GSA to have a total of 30 business days to complete a response. If upon initial review of the request, it is determined that more than 30 business days will be needed to complete the request in full, the requester must be notified and given the opportunity to

narrow the scope of the request or to negotiate a new timeframe for completion. Any negotiated timeframes must be handled by the FOIA Requester Service Center, made in writing and documented within the FOIAonline system.

Fees and Payments

The Freedom of Information Act provides for the charging of fees “applicable to the processing of requests.” The FOIA Requester Service Center and the Subject Matter Expert are responsible for working together to determine the fee associated with each request. The FOIA Requester Service Center will notify the requester of the fees due. A Fee Sheet must be provided to the requester; in addition, the fees must be paid in full before the records can be released for FOIA requests over \$250. Until an agreement for fees due is made, the twenty business timeframe to complete the request does not start.

Fees **can** be charged for the following items:

- (1) Time spent in locating records that come within the scope of the request;
- (2) Direct costs of computer time required to locate or retrieve information;
- (3) Time spent by an agency searcher to travel to a record storage facility, or to order records from such a facility;
- (4) Time spent in examining a requested record to determine whether it should be withheld in whole or in part; and
- (5) Time spent in deleting exempt material withheld from records otherwise releasable.

Fees **cannot** be charged for the following items:

- (1) Internal GSA-OGC or GSA Management and review and concurrence.
- (2) Copies or replication of documents made exclusively for internal for GSA staff to review and redact.
- (3) Scanning or digitizing of documents for the purpose of internal review.

For purposes of fee assessment only; the FOIA categorizes requesters into three categories, which are described below. Fees charged are based on the category under which the requester

falls. The FOIA Requester Service Center and the Subject Matter Expert work together to determine the requester's user category. Once this is determined and the Subject Matter Expert has determined the appropriate cost, the FOIA Requester Service Center notifies the requester of fees due. The fee rates are set per GSA FOIA Regulations 41 CFR 105-60. The FOIA Requester Service Center must ensure that the fees are paid in full before the records are released for all FOIA requests over \$250. In the case of Media requesters, if there is a question, the FOIA Requester Service Center should perform research and work with the Office of the General Counsel to determine the appropriate requester's user category.

The FOIA provides for three categories of requesters:

(1) Commercial use requesters

Commercial-use requesters are defined as those who seek records for "a use or purpose that furthers the commercial trade, or profit interests of the requester or the person on whose behalf the request is being made which can include furthering those interests through litigation. Commercial Users may be charged fees for searching for records, "processing" the records (i.e., reviewing them to determine the application of FOIA exemptions and making redactions), and duplicating them to respond to a request.

(2) Educational institutions, non-commercial scientific institutions, and representatives of the news media

This category consists of requesters who seek records for a noncommercial use and who qualify as one of three distinct subcategories of requesters: those who are affiliated with an educational institution, those who are part of a noncommercial scientific institution, and those who are representatives of the news media. Educational, noncommercial scientific institutions, and representatives of the news media are charged only for duplication fees, and are provided the first one hundred requested pages free of charge.

(3) All requesters who do not fall within either of the preceding two categories

All other requesters are charged only for record searches and duplication. For non-commercial-use requesters there is no charge for the first two hours of search time or for the first 100 pages of duplication. GSA currently charges ten cents per page for duplication. It charges an hourly search fee of \$13 for clerical staff and \$29 for professional staff.

In all cases, if the final total fee due does not exceed \$25, GSA will not charge any fee. In other cases, GSA may waive or reduce fees for FOIA requests if the requester explains:

- (1) How the subject matter of the requested records directly and clearly concerns identifiable operations of the Federal Government;
- (2) How disclosure will contribute significantly to public understanding of the operations or activities of the Government or agency;
- (3) How the materials are FOIAonline and do not duplicate materials already in the public domain; and
- (4) What the impact on the commercial interests of the requester will be, if any.

Requests for waivers must be included in the initial request for access to records and must provide sufficient information to enable GSA to evaluate the request.

If the total fees due are over \$250, the processing of the request will stop until the requester pays the fees. If the fees due are under \$250, GSA must receive an assurance of payment by the requester to process the request. Once the materials are ready for response, the GSA FOIA Requester Service Center must receive payment prior to releasing the response to the requester.

SEARCHING FOR AND COMPILING RECORDS

Conducting an Adequate Search

The Subject Matter Expert (SME) is required to make reasonable efforts to locate records responsive to a FOIA request, including page-by-page or line-by-line identification of material within records. All files likely to contain responsive records must be searched, including electronic records such as hard drives, disks, and databases. However, no one is required to create records for the purpose of satisfying the FOIA request.

If a request is seeking contractual information, the SME should use the following resources:

- Federal Procurement Data System (FPDS) www.fpds.gov/
- www.usaspending.gov/
- FedBizOpps (www.fedbizopps.gov/)
- Schedules e-Library (within GSA Advantage) <http://www.gsaelibrary.gsa.gov/>

If a request contains language asking for records “up to the present”, records that are dated on the day the search begins are considered to be the most recent records.

Providing Records in the Format Requested

In accordance with Federal Government Records Management Regulations, GSA, like all federal agencies, must make reasonable efforts to maintain records in forms or formats that are reproducible for purposes of the FOIA. The SME must provide the FOIA Requester Service Center

the records in the format requested (e.g., CD-ROM, Excel, Portable Document File (PDF), ZIP file, flash drive, etc.) if they are reproducible in that format. If the requester did not specify a preferred format, records will be provided electronically in a form commonly used by the general public. (e.g., CD-ROM, Excel, Portable Document File (PDF), ZIP file, flash drive, etc.)

In most instances, records provided in an electronic format will be a PDF. If the information requested requires the information to be provided in Excel, the cells of the spreadsheet must be locked. In addition, if the spreadsheet contains any Personally Identifiable Information (PII), it must be fully redacted per applicable FOIA Exemptions.

Searching for Electronic Records

Electronic records such as information and data stored on hard drives, disks and agency servers along with email records are subject to the FOIA.

For particularly large or voluminous system and server data requests, there is no mandatory requirement to write or create any new data in order to respond to a FOIA request. However, if extracting the requested information requires only a modification of existing programming, and the effort spent in making the modification is minimal, then the SME should do what is needed to do to retrieve the responsive records. Otherwise, if retrieval of the information requested would require reprogramming /or new programming or unreasonable additional expenses, the SME is not required to proceed. An assessment of reasonableness should be applied on a case-by-case basis.

Request for Email Retrievals

In the event that a FOIA request requires pulling e-mail files, all such requests for email records need to be performed by the Office of the Chief Information Officer (OCIO) staff. These requests must first be submitted from the GSA FOIA Director to the Chief FOIA Officer /or his or her designee for approval. The Chief FOIA Officer /or his or her designee is the only official that can authorize the email retrievals. The Chief FOIA Officer will contact the Chief Information Officer or his or her designee to retrieve the raw data.

The request submitted to the Chief FOIA Officer must include the parameters for the search, including: keywords, mailboxes to be searched (i.e. emails sent or received by), and appropriate and specified date ranges.

Once the data pull is completed by the OCIO, the raw data results will be sent to the lead GSA SME to review and redact (if necessary) the emails. After reviewing and redacting (if necessary) the emails, the SME will submitting their proposed redactions to the GSA FOIA Requester Service Center for final review. The GSA FOIA Requester Service Center will seek concurrence on the final release from the Office of General Counsel prior to releasing the responsive records to the requester (if any).

The following is an example of an Email Pull Request:

[GSA-2015-000533](#) -

REQUEST DESCRIPTION:

- 1. Any accounting showing the name and salary of every person currently employed by a former president under the Former Presidents Act at 3 U.S.C. § 102(b).
- 2. Purchase contracts or lease documents for all office space provided to former presidents under the Former Presidents Act at 3 U.S.C. §102(c).
- 3. An accounting of all disbursements for security and travel for former presidents under the Former Presidents Act at 3 U.S.C. § 102(g) since January 20, 2001.

KEYWORD(S):

- "Former Presidents Act" and
- "Leases" and "Security" and "Travel" and "Office Space"

TIMEFRAME: January 1, 1999 - June 1, 2015

MAILBOXES: All [gsa.gov](#) accounts

Redactions and Exemptions

GSA's policy is to provide maximum allowable disclosure of agency records upon request by any individual.

The FOIA requires that virtually every record in the possession of a federal agency be made available to the public, unless the record or any portion of it is exempt from disclosure. The nine exemptions of FOIA provide the only basis for withholding information. Records that meet the exemption criteria may be withheld from public disclosure, and thus not be provided in response to a FOIA request.

Here's a "quick list" of the nine FOIA exemptions (for official verbiage please visit DOJ Office of Information Policy at <http://www.justice.gov/oip/doj-guide-freedom-information-act>):

Exemption 1:

Protects from disclosure information that has been deemed classified "under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" and is "in fact properly classified pursuant to such Executive order." The current Executive order that addresses classified National Security Information is EO 13526.

Exemption 2: Protects records that are “related solely to the internal personnel rules and practices of an agency.” Examples of these may be rules as to personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and the like.

Exemption 3: Information that is prohibited from disclosure by another federal law. Allows the withholding of information prohibited from disclosure by another federal statute provided that one of two disjunctive requirements were met: the statute either "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

Exemption 4: **Protects commercial or financial information obtained from a person that is privileged or confidential.**

Exemption 5: **Protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.”**

Exemption 6: **Protects information in "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."**

Exemption 7: **Protects information compiled for law enforcement purposes, that release of which:**

- A) Could reasonably be expected to interfere with law enforcement proceedings,
- B) Would deprive a person of a right to a fair trial or an impartial adjudication,
- C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,**
- D) Could reasonably be expected to disclose the identity of a confidential source,
- E) Would disclose techniques, procedures, or guidelines for investigations or prosecutions, or
- F) Could reasonably be expected to endanger an individual's life or physical safety.**

Exemption 8:	Protects matters contained in or related to examination, operating, or condition reports prepared by or for regulators or supervisors of financial institutions.
Exemption 9:	Protects geological information and data, including maps, concerning wells.

*Bolded text represents most commonly used exemptions at GSA.

The “Reasonably Segregable” Requirement

If a record contains both disclosable and protected information, any disclosable portion of that record that is “reasonably segregable” from the rest of the record must be released to the requester. Courts look closely at an agency’s decision process regarding what portions, if any, of a record is released. However, if disclosable material is so intertwined with exempt material that disclosure would leave only meaningless words and phrases, or if editing out the protected portions would be so extensive as to effectively result in the creation of a new record, the entire record can be withheld.

Redacting the Records

The word “redact” is often used in the FOIA business to refer to removing some information from a document because that information cannot be disclosed. GSA uses electronic software applications for redacting documents. The official software application used by GSA is Adobe Acrobat Professional. Hand redactions are obsolete. Adobe Acrobat Professional will be used to make proposed redactions. The SME must save the proposed redactions for review without applying the final redactions. The original documents should never be redacted. Both the copy with proposed redactions and a copy of the original record must be saved and uploaded into FOIAonline under the “Case File” Tab.

Tips for Redacting records:

Ensure that you have GSA IT Service approved redaction software. (i.e. Adobe Professional or Nuance). The GSA IT Service Center can assist you with procurement of these applications and general settings.

- (1) Indicate which exemption(s) was used and why.

Cite in the draft response letter why the exemption(s) was used and specifically what type of information was redacted (e.g., personal phone numbers, proprietary business information, or security-related information (See Appendix for listing of commonly redacted examples). This allows the requester to correlate the FOIA exemptions with the words or lines that have been deleted.

(2) Indicate the amount withheld.

When a record is redacted, the requester must be able to see how much of the information was redacted. For example, rather than send only the disclosable material to the requester, send the record with the redacted material marked out, unless the result is material withheld in its entirety. This way, the requester can see where material existed that was marked out so as to not be viewable by the public. In addition, the type of information redacted must be described in the letter to the requester in order to help him or her understand what information is not being provided to them.

(3) Indicate amount withheld in its entirety.

When an entire record is withheld, the draft response letter must inform the requester approximately how much has been denied. The estimate will usually take the form of number of pages or electronic file size; or for extremely large-volume requests, the estimate can be in terms of boxes, file drawers, or even linear feet. For withheld electronic records, use kilobytes, megabytes, an electronic "word count" or a conventional record equivalent (standard document pages), whichever would be most effective in communicating the volume withheld. (See appendix for examples.)

FOIA Record Referrals

When GSA locates records which originated with another agency, the records will be referred to the originating agency for processing and direct response to the requester. The following steps are taken when making a referral of documents to another agency or component of an agency, subject to the exceptions described below regarding coordinating a response:

- The Subject Matter Expert should work with the FOIA Requester Service Center to identify records appropriate for referral to other agencies or components as soon as practicable during the course of processing a request.
- If applicable, prior to making the referral, the Subject Matter Expert should review the records for any records GSA may have and send the material to the FOIA Requester Service Center. The FOIA Requester Service Center will include GSA's disclosure recommendations in the referral memorandum and will facilitate the processing of the referral by the

receiving agency.

- The FOIA Requester Service Center will send the documents, with the accompanying memorandum containing GSA's disclosure recommendations, to the originating agency or agencies as soon as practicable during the course of processing.
- The FOIA Requester Service Center will include in the referral package the FOIA request number assigned by GSA. The original FOIA request number should always accompany any communication concerning the referred documents. Also include a copy of the FOIA original request.
- The FOIA Requester Service Center will provide the original request date of the referred FOIA request. This will allow the agency receiving the referral to place the records in any queue according to that request receipt date.
- The FOIA Requester Service Center will advise the FOIA requester that a referral of records has been made, provide the name of the agency to which the referral was directed, and include that agency's FOIA contact information.
- The FOIA Requester Service Center will maintain a copy of the records being referred and the cover memorandum accompanying the referral and upload it into FOIAonline.

These steps serve several overlapping purposes:

- Makes the referral process transparent;
- Maximizes administrative efficiency; and
- Facilitates tracking of the referred documents.

To assist the requesters/agencies readily match the documents released as a result of their original request, the FOIA Requester Service Center will:

- Identify the agencies to which referrals) were directed;
- Maintain a copy of the original GSA FOIA request number; and
- Store all records in the FOIAonline system.

Interagency FOIA Consultations

Interagency FOIA Consultations are used when GSA locates a record that contains information of likely interest to another agency. GSA will ask for the views of that other agency on the disclosure

of the records before any final determination about releasing the documents to the requester is made.

Also, consultations are especially useful in informing an agency of any sensitivity of records originating with entities not subject to the FOIA. A formal consultation notice from GSA that the agency is consulting with a record's originator whenever this process delays an agency's FOIA response.

Considering Submitter (Vendor/Contractor) Rights

[Executive Order 12600](#) sets forth, "Predisclosure Notification Procedures for Confidential Commercial Information" and lays out procedures for notifying those who submit business information to the federal government when that information becomes the subject of a FOIA request. Such businesses are referred to in the Executive Order as "submitters".

The Executive order is based upon the principle that submitters or those people who are seeking to do business with the government (vendor/contractors) are entitled to such notification and an opportunity to object to disclosure before an agency makes a disclosure determination.

Upon receipt of a FOIA request that seeks business information provided to GSA, the official to whom the FOIA request has been assigned must promptly notify the submitter if:

- (1) The records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or
- (2) GSA has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

The notification letter to the submitter shall explain that the submitter must include the following in its response to GSA:

- (1) Specifically identify the records or portions of records that would be harmful to the submitter if released;
- (2) Specify why disclosure would cause the submitter substantial competitive harm; e.g. how a competitor could use the information to the submitter's commercial disadvantage; and
- (3) Describe the methods the submitter uses to protect or maintain the confidentiality of this information within the business. The submitter must be given seven (7) working days from the date of the letter to respond.

These Submitter (Vendor/Contractor) notice requirements do not apply if GSA

determines that the information should not be disclosed, the information has been lawfully published or otherwise made available to the public, or disclosure of the information is required by law.

At the same time that notice is provided to the submitter, the SME should notify the FOIA Requester Service Center of this action. The FOIA Requester Service Center will notify the FOIA requester in writing of the following:

- (1) That notice has been given to the submitter; and
- (2) That additional time may be required to process the request. The SME will discuss with the FOIA Requester Service Office whether an extension is necessary and the FOIA Requester Service Center Office will negotiate with the requester for an extension if necessary.

There is no need to notify the submitter when:

- (1) GSA determines the information should not be disclosed;
- (2) The information is already public;
- (3) A law other than FOIA requires disclosure;
- (4) A GSA regulation meeting specified requirements requires release;
- (5) The submitter did not designate the material as confidential and GSA agrees; or
- (6) The designation as confidential seems frivolous (although there is a disclosure notification requirement).

If GSA decides to disclose any part of the information that the submitter has asked the agency to withhold, the FOIA office must:

- (1) Notify the submitter by telephone; and
- (2) Follow up contact with a formal letter with the following information:
 - (A) Reasons for release;
 - (B) Copy of released documents; and
 - (C) Notification that release will not occur for at least five (5) working days.

WRITING A RESPONSE¹

In any situation, standard language to be stated in the response letter should include:

Date

Requester's address

Dear Mr./Mrs./Ms. [Requester's Last name]:

This is in response to your U.S. General Services Administration (GSA) Freedom of Information Act (FOIA) request (2015-XXXXXX), submitted on (e.g. January 1, 2015,) in which you requested the following:

“(insert language from initial request).”

In most cases, after researching a FOIA request, the response to be provided will fall into one of four categories:

(1) Full release of records

If a full grant of access is made, tell the requester that he/she is granted full access to the records located. No appeal rights are given.

Enclosed please find the documents responsive to your request. These documents include (list/describe the documents to be sent to the requester).

(2) No records found.

If no records are located, tell the requester that a search was conducted and no responsive records were found. Appeal rights are cited because a no-records response is considered an adverse determination.

Language to include for a no-records response:

After a thorough search, GSA was not able to locate any records responsive to your request.

¹ Example letters are included in the appendix of this manual.

You have the right to appeal the adequacy of our search. To do so, you must write, within 120 days of your receipt of this letter, to the following address:

*FOIA Requester Service Center (H1C)
U.S. General Services Administration
1800 F St. NW, Room 7308
Washington, DC 20405*

Your appeal must be in writing and should contain a brief statement of the reasons why you believe GSA should have the requested information. Enclose a copy of your initial request and a copy of this letter. Both the appeal letter and envelope should be marked prominently, "Freedom of Information Act Appeal."

(3) Partial release of records

If a partial grant of access is made, tell the requester that access is being granted to part of the responsive records. In addition, advise the requester regarding the types of records withheld and the FOIA exemption(s) claimed for withholding. All exemptions that are applicable must be cited in full so that the administrative record is complete. Appeal rights are given for this type of response. A copy of the redacted record should be provided to the requester.

In processing your request we withheld the following: (describe what information is being withheld, for example, employee cell phone numbers, the Employer Tax Identification number, or home addresses, etc.. This is done in accordance with (cite exemption number and give reasoning why this exemption applies).

You have the right to appeal the partial denial of the information withheld. To do so, you must write, within 120 days of your receipt of this letter, to the following address:

*Freedom of Information Act Office (H1C)
U.S. General Services Administration
1800 F St. NW, Room 7308
Washington, DC 20405*

Your appeal must be in writing and contain a brief statement of the reasons why the withheld information should be released. Enclose a copy of your initial request and a copy of this letter. Both the appeal letter and envelope

should be marked prominently, "Freedom of Information Act Appeal."

(4) Full denial of access

When responsive records have been located but none are being disclosed, tell the requester that access to the records is denied in full. All exemptions that are applicable must be cited so that the administrative record is complete. Appeal rights are given and are similar to the paragraph above.

CLEARANCE PROCESS

After a draft response is prepared and uploaded into FOIAonline by the Subject Matter Expert, it should be provided for concurrence to the necessary parties. If the document contains redactions, then the attorney that works specifically with the SME's office or business line should review the redactions and ensure they are proper and approved by OGC. Once the SME has made any changes recommended by OGC and the other parties, the final documents should be provided in FOIAonline under the **Documents** tab. It is critical that the HSSO or RA/RC also be aware of proposed responses for FOIA's relating to their business lines and/or regional offices; however, they will not release FOIA responses.

After the concurrences are finalized, the FOIA Requester Service Center must be notified so that they can review the final documents in FOIAonline. When the FOIA Requester Service Center reviews the response package, they must make sure that the response is complete. In cases where no documents are being provided, the response letter must explain why the documents are not provided. In addition, when information is being withheld, the letter must correctly cite the exemptions being used. It is also the responsibility of the FOIA Requester Service Center to edit the letter for misspellings and grammatical errors. The office is authorized to make minor edits as long as it does not change the substance of the response. The most important responsibility is to verify that the records being provided answer the request and that the exemptions listed in the letter match the exemptions used on the documents.

If it is a press request, the FOIA Requester Service Center should advise the communication director or his/her designee before releasing the final response to the requester.

If another agency is asking for GSA's concurrence on a request they are responding to, the Chief FOIA Officer must be notified of the request.

After a thorough review, the FOIA Requester Service Center Program Manager / FOIA Director will sign the response letter and ensure all necessary documents are in FOIAonline. Once these steps are completed and the applicable required fees are collected, the FOIA Requester Service Center can release the response to the requester and close out the request in FOIAonline.

PROCESSING APPEALS

If GSA withholds records either in whole or in part, that decision may be appealed by the requester in writing to the FOIA Requester Service Center.

The appeal should:

- (1) Contain the basis for disagreement with the initial denial; and
- (2) Be received by the GSA FOIA Requester Service Center within 120 days of the receipt date that the denial letter was received by the requester.

Appeal procedures also apply to the denial of a request for a waiver or reduction of fees; when there has been an adverse determination of the requester's fee category; a finding of no responsive records located; or the denial of a request for expedited processing.

Once the FOIA Requester Service Center receives a legitimate Appeal request, a new FOIAonline entry is opened to manage this appeal, an acknowledgement sent, and the new FOIAonline entry is created by the FOIA Requester Service Center. For the newly created FOIAonline record, it is important that all of the documents created in the original FOIA request (such as correspondence) and the responsive documents sent to the requester are uploaded into FOIAonline. This file should contain such items as:

- (1) The initial FOIA request;
- (2) Any correspondence between the Agency and the requester acknowledging the request, negotiating the scope, fees or time required to respond to the request;
- (3) Copies of any information released;
- (4) Copies of any information withheld;

- (5) Any document discussing the status of the request;
- (6) The initial determination and any interim responses;
- (7) Any index that may have been prepared at the discretion of the responsible official;
- (8) Any notes or memoranda generated as a result of the FOIA request.

Time limits for Appeals

If the requester chooses to appeal the initial determination, he or she must do so within 120 days from the date of his or her receipt of the final response letter informing the requester that a determination to withhold has been made (or the date of the letter transmitting the last records released, whichever is later). Final determinations on appeals shall be made within 20 business days after receipt.

Time Extensions for Appeals

If it is not possible to review the case file and respond to an appeal within 20 business days, the requester should be contacted to negotiate an extension of time. In unusual circumstances, GSA can take up to 10 working days to respond to the appeal.

Preparing the Administrative Appeal Letter

When the GSA FOIA Requester Service Center receives an appeal letter it assigns the appeal to a new GSA office to get a fresh review.

For example, if the original FOIA request was for Federal Acquisition Service (FAS) - Region 7, the appeal may be assigned to Central Office FAS.

The new SME will perform the FOIA review, prepare the findings and response letter, obtain legal review, and forward the proposed response package, through FOIAonline, to the FOIA Requester Service Center. The GSA FOIA Requester Service Center handles the concurrence process of getting the letter approved by appropriate GSA management officials. When the appeal official makes a determination to release all or a portion of records previously withheld in the initial determination, a copy of these records should be forwarded promptly to the requester after the final letter is prepared and sent to the requester, signed by the Chief FOIA Officer.

If the appeal official determines that the appeal is to be denied, either in whole or in part, the written response shall notify the requester of the denial, the reasons for the denial including the FOIA exemptions relied upon, and the name and title of the appeal official. Additionally, the letter must include the following language:

This is GSA's final determination of your appeal. You have the right to seek judicial review of this determination in the United States District Court in which you reside, where your principal place of business is, where the records are located, or in the District of Columbia.

As an alternative to litigation, the Office of Government Information Services (OGIS) has been created under the 2007 FOIA amendments. OGIS was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS by writing to:

*Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road, Room 2510
College Park, MD 20740
Email: ogis@nara.gov
Phone at (877) 684-6448.*

Appendix

Getting Started: FOIAonline System

Creating a workflow

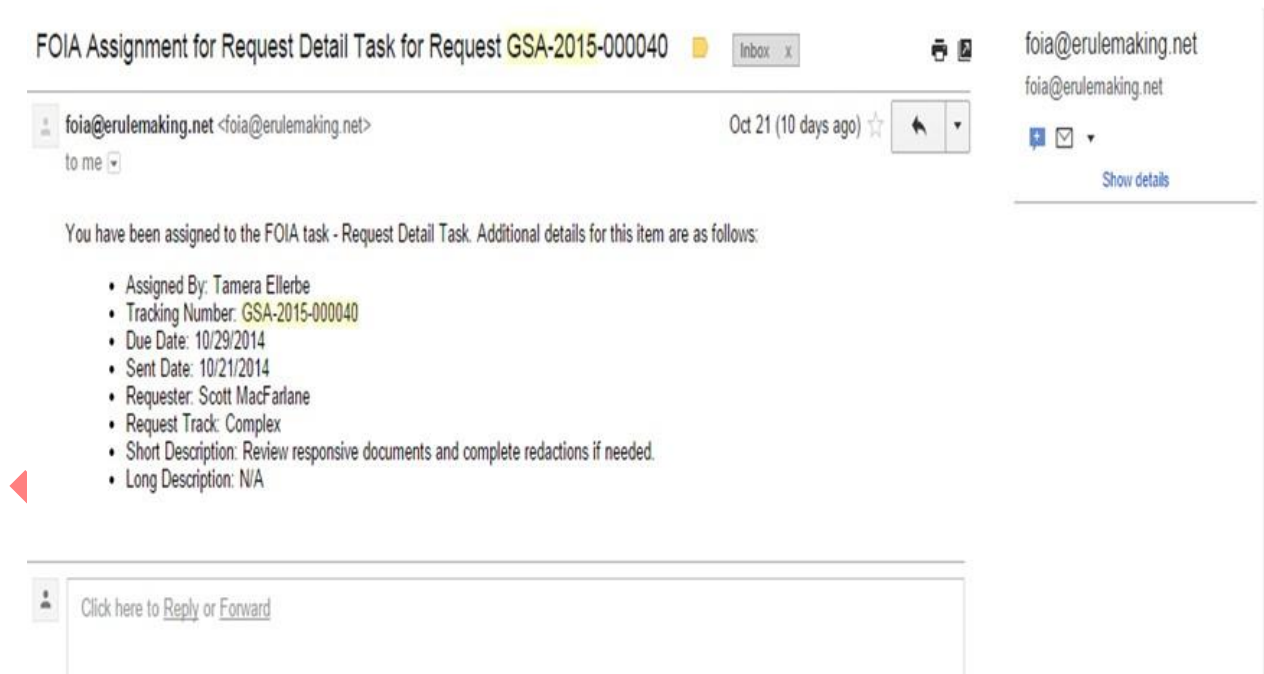
The FOIA Requester Service Center is responsible for creating all workflows.

To create a workflow the, FOIA Requester Service Center must:

1. Access the FOIAonline through <https://foiaonline.regulations.gov/foia/gsa>.

Step 1

When you have been assigned a task for a FOIA you will receive a email notification from FOIAonline.



Step 2

Once you have reviewed the task email notification, you will need to login to FOIA online to access the task.

The screenshot shows the FOIAonline Agency Portal interface. At the top, a dark blue header bar contains the text "Welcome, Tamera Ellerbe" and a "SIGN OFF" link on the left, and a "Print Page" icon and link on the right. Below this, a navigation bar features the FOIAonline logo on the left and links for "Glossary", "FAQs", "Resources", and "About" on the right. A main navigation menu includes "Home", "Search", "Reports", "Administration", and "My Account". To the right of these links is a search box labeled "Search FOIA requests...". The "Home" page is active, displaying a sidebar with links: "My Cases", "Unassigned Cases", "Assigned Cases", "New Request", "New Consultation", and "New Referral". The main content area has a heading "Welcome to the FOIAonline Agency Portal." followed by a paragraph explaining the portal's functionality: "The Agency Portal allows users to view requests created by the public and create requests which were received outside the system. Access existing requests through the My Cases, Unassigned Cases, or Assigned Cases dashboards to the left of the page, or the 'Search FOIA requests...' box in the upper-right corner. Likewise, requests, consultations (from a non-participating agency), and referrals (from a non-participating agency) can be created using the corresponding actions to the left of the page." At the bottom, a footer bar provides contact information: "Help Desk (9:00 am - 5:00 pm ET, M-F) | Toll-Free: (855) 246-FOIA (855-246-3642) | Local: (703) 412-3082 | Email Support", along with links for "Privacy and Security Notice" and "Accessibility Statement".

Welcome, Tamera Ellerbe [SIGN OFF](#) [Print Page](#)

FOIAonline Glossary FAQs Resources About

Home Search Reports Administration My Account Search FOIA requests...

My Cases

- Unassigned Cases
- Assigned Cases
- New Request
- New Consultation
- New Referral

Welcome to the FOIAonline Agency Portal.

The Agency Portal allows users to view requests created by the public and create requests which were received outside the system. Access existing requests through the My Cases, Unassigned Cases, or Assigned Cases dashboards to the left of the page, or the "Search FOIA requests..." box in the upper-right corner. Likewise, requests, consultations (from a non-participating agency), and referrals (from a non-participating agency) can be created using the corresponding actions to the left of the page.

Help Desk (9:00 am - 5:00 pm ET, M-F) | Toll-Free: (855) 246-FOIA (855-246-3642) | Local: (703) 412-3082 | [Email Support](#)
[Privacy and Security Notice](#) | [Accessibility Statement](#)

Step 3

Next click the MyCases tab to access assigned tasks. Then select / click the tracking number of task to open the task details

Welcome, Tamera Ellerbe [SIGN OFF](#) [Print Page](#)

[Glossary](#) [FAQs](#) [Resources](#) [About](#)

[Home](#) [Search](#) [Reports](#) [Administration](#) [My Account](#)

Click on the my cases tab

My Cases Filter: **All** Results: **25**

2 items found, displaying 1 items

Select Tracking Number

Tracking Number	Type	Track	Requester	Assigned	Due	Status	Detail
GSA-2015-000040	Task	Complex	Scott MacFarlane	10/21/2014	10/29/2014	Assignment Determination	Detail
GSA-2015-000040	Request	Complex	Scott MacFarlane	10/09/2014	11/12/2014	Assignment Determination	Detail

2 items found, displaying all items.

Export options: [CSV](#) | [Excel](#)

Help Desk (9:00 am - 5:00 pm ET, M-F) | Toll-Free: (855) 246-FOIA (855-246-3642) | Local: (703) 412-3082 | [Email Support](#)
[Privacy and Security Notice](#) | [Accessibility Statement](#)

Step 4

You are then prompted to the task details page. To review task details click the blue button to expand the details section.

Task Details

Request Status : *Assignment Determination* **Task Due Date :** 10/29/2014

Submitted Evaluation **Assignment** Processing Closed

Request Details

Tracking Number : GSA-2015-000040 Submitted Date : 10/07/2014
Requester : Mr. Scott MacFarlane Perfected Date : 10/14/2014
Organization : Cox Television Last Assigned Date : 10/09/2014
Requester Has Account : No Fee Limit : \$25.00

Task Details

Task Type : Request Detail Assigned To : Tamera Ellerbe (General Services Administration)

Submission Details Case File Admin Cost Assigned Tasks Comments (0) Review

Request Handling

Requester Info : Yes Request Perfected : Yes
Available to the Public : Perfected Date : 10/14/2014
Request Track : Complex Acknowledgement Sent : 10/07/2014
Fee Category : Media/Educational Date :
Fee Waiver Requested : No Unusual Circumstances ? : No
Fee Waiver Status : N/A

Click to expand details

Click to expand details

Step 5

Task details will provide a brief description of the actions you will need to take to complete the assigned task . (i.e gather responsive documents)

The screenshot displays a web application interface for task management. On the left is a vertical sidebar with a dark blue background and white text links: 'My Cases', 'Unassigned Cases', 'Assigned Cases', 'Task Details' (highlighted), 'Make Assignment', 'Create Task', 'Upload Responsive Records', 'Create Correspondence', 'Create Comment', 'Create Consultation', 'Create Referral', and 'Close Out Task'. The main content area has a white background. At the top, it shows 'Task Details' and 'Request Status : Assignment Determination' with a progress bar of five circles (Submitted, Evaluation, Assignment, Processing, Closed), where 'Assignment' is the current status. To the right, it says 'Task Due Date : 10/29/2014'. Below this is a 'Request Details' section with a blue header, containing fields for Tracking Number (GSA-2015-000040), Submitted Date (10/07/2014), Requester (Mr. Scott MacFarlane), Perfected Date (10/14/2014), Organization (Cox Television), Last Assigned Date (10/09/2014), Requester Has Account (No), and Fee Limit (\$25.00). A 'Task Details' section with a blue header follows, showing Task Type (Request Detail), Due Date (10/29/2014), Task Submitted Date (10/21/2014), Assigned To (Tamera Ellerbe (General Services Administration)), Last Assigned Date (10/21/2014), Last Assigned By (Tamera Ellerbe (General Services Administration)), and a Description (Review responsive documents and complete redactions if needed.). Below these sections is a horizontal tab bar with 'Submission Details' (selected), 'Case File', 'Admin Cost', 'Assigned Tasks', 'Comments (0)', and 'Review'. At the bottom, a 'Request Handling' section is partially visible. A large red 'Under' watermark is diagonally across the bottom half of the page.

Task Details

Request Status : Assignment Determination Task Due Date : 10/29/2014

Submitted Evaluation Assignment Processing Closed

Request Details

Tracking Number : GSA-2015-000040 Submitted Date : 10/07/2014

Requester : Mr. Scott MacFarlane Perfected Date : 10/14/2014

Organization : Cox Television Last Assigned Date : 10/09/2014

Requester Has Account : No Fee Limit : \$25.00

Task Details

Task Type : Request Detail Assigned To : Tamera Ellerbe (General Services Administration)

Due Date : 10/29/2014 Last Assigned Date : 10/21/2014

Task Submitted Date : 10/21/2014 Last Assigned By : Tamera Ellerbe (General Services Administration)

Description : Review responsive documents and complete redactions if needed.

Comments :

Submission Details Case File Admin Cost Assigned Tasks Comments (0) Review

Request Handling

Step 6

After completing the assigned task, you can upload responsive documents under the Upload Responsive record tab.

Assigned Cases

Task Details

Make Assignment

Create Task

Upload Responsive Records

Create Correspondence

Create Comment

Create Consultation

Create Referral

Close Out Task

Submitted Evaluation Assignment Processing Closed

Request Details

Tracking Number : GSA-2015-000040 Submitted Date : 10/07/2014

Requester : Mr. Scott MacFarlane Perfected Date : 10/14/2014

Organization : Cox Television Last Assigned Date : 10/09/2014

Requester Has Account : No Fee Limit : \$25.00

Task Details

Task Type : Request Detail Assigned To : Tamera Ellerbe (General Services Administration)

Due Date : 10/29/2014 Last Assigned Date : 10/21/2014

Task Submitted Date : 10/21/2014 Last Assigned By : Tamera Ellerbe (General Services Administration)

Description : Review responsive documents and complete redactions if needed.

Comments :

Upload Responsive Records

The Release Type can be modified after uploading but must be provided initially. Records should be uploaded in batches with identical release types.

If you are having problems, or do not see the "Select Files" button, switch to the basic uploader.

SELECT FILES

ADD WITHOUT FILE UPLOAD

No records have been uploaded.

* Release Type : Select Release Type

Keywords :

SAVE CHANGES **CANCEL**

Step 7

After selecting the upload responsive tab, click the select files button to begin the uploading process.

Assigned Cases

Task Details

Make Assignment

Create Task

Upload Responsive Records

Create Correspondence

Create Comment

Create Consultation

Create Referral

Close Out Task

Submitted Evaluation Assignment Processing Closed

Request Details

Tracking Number : GSA-2015-000040 Submitted Date : 10/07/2014

Requester : Mr. Scott MacFarlane Perfected Date : 10/14/2014

Organization : Cox Television Last Assigned Date : 10/09/2014

Requester Has Account : No Fee Limit : \$25.00

Task Details

Task Type : Request Detail Assigned To : Tamera Ellerbe (General Services Administration)

Due Date : 10/29/2014 Last Assigned Date : 10/21/2014

Task Submitted Date : 10/21/2014 Last Assigned By : Tamera Ellerbe (General Services Administration)

Description : Review responsive documents and complete redactions if needed.

Comments :

Upload Responsive Records

The Release Type can be modified after uploading but must be provided initially. Records should be uploaded in batches with identical release types.

If you are having problems, or do not see the "Select Files" button, switch to the basic uploader.

SELECT FILES ← Click to upload files

ADD WITHOUT FILE UPLOAD

No records have been uploaded.

★ Release Type : Select Release Type

Keywords :

SAVE CHANGES **CANCEL**

Step 8

Review the uploaded file

My Cases

Unassigned Cases

Assigned Cases

Request Details

Make Assignment

Estimate Costs

Stop the Clock

Extend Due Date

Create Task

Upload Responsive Records

Create Correspondence

Create Comment

Create Consultation

Create Referral

Create Appeal

Interim Release

Transfer Request

Export Request

Request Details

Status : Assignment Determination Due Date : 11/12/2014

Submitted Evaluation Assignment Processing Closed

Tracking Number : GSA-2015-000040

Submitted Date : 10/07/2014

Requester : Mr. Scott MacFarlane

Perfected Date : 10/14/2014

Organization : Cox Television

Last Assigned Date : 10/09/2014

Requester Has Account : No

Fee Limit : \$25.00

Upload Responsive Records

The Release Type can be modified after uploading but must be provided initially.
Records should be uploaded in batches with identical release types.

If you are having problems, or do not see the "Select Files" button, switch to the basic uploader.

SELECT FILES

ADD WITHOUT FILE UPLOAD

Record Title	Record File Name	Type	Size (MB)	Remove
2012_Cardin_red_11.5	2012_Cardin_red_11.5.pdf	PDF	9.91	

* Release Type : Select Release Type

Keywords :

SAVE CHANGES

CANCEL

Step 9

Select a release type from the drop down menu. You must select a record type for all records uploaded into the FOIAonline system.

Task Details

Task Type : Request Detail Assigned To : Tamera Ellerbe (General Services Administration)

Upload Responsive Records

The Release Type can be modified after uploading but must be provided initially. Records should be uploaded in batches with identical release types.

If you are having problems, or do not see the "Select Files" button, switch to the basic uploader.

SELECT FILES

ADD WITHOUT FILE UPLOAD

No records have been uploaded.

★ Release Type : **Select Release Type**

Keywords : **Select Release Type**

- UU - Unredacted - Unreleasable
- RU - Redacted - Unreleasable
- UR - Unredacted - Releasable
- RR - Redacted - Releasable
- REQ - Release to Requester Only

SAVE CHANGES **CANCEL**

Click the drop down menu and select the release type

There are five release types that you may select from UU – Unredacted – Unreleasable; RU- Redacted –Unreleasable; UR- Unredacted – Releasable; RR- Redacted- Releasable and REQ- Release to Requester Only.

Under

Step 10

When **RR: redacted releasable** is selected as the file type you must select the exemptions applied to the document. Click on the pencil to select exemptions

Create Appeal

Interim Release

Transfer Request

Export Request

Begin Close Out Process

Generate Invoice

Print Case File


































RR - Redacted - Unreleasable
UR - Unredacted - Releasable to the
General Public

PUBLIC
REQ - Release to Requester


Filter by Title or Keyword(s):

Filter by Release Type:

35 items found, displaying all items.

Publish	Title	Type	Exempt	Retention	Action	Detail
RR	SF30-MOD 001_r	PDF	N/A	Default	 	
RR	MODS 1-31_r	PDF	N/A	Default	 	
RR	SF30-MOD 031_r	PDF	N/A	Default	 	
RR	SF30-MOD 030_r	PDF	N/A	Default	 	
RR	SF30-MOD 029_r	PDF	N/A	Default	 	
RR	SF30-MOD 028_r	PDF	N/A	Default	 	
RR	SF30-MOD 027_r	PDF	N/A	Default	 	
RR	SF30-MOD 026_r	PDF	N/A	Default	 	
RR	SF30-MOD 025_r	PDF	N/A	Default	 	
RR	SF30-MOD 024_r	PDF	N/A	Default	 	
RR	SF30-MOD 023_r	PDF	N/A	Default	 	

Click to select
exemptions that
have been applied



[/foia/action/agency/request/detail/edit/?recordId=3Lcbu1BcCIN8gHE...](#)

Under

CONVERTING EMAILS: Preparing to Review and Propose Redactions

In order to perform this portion of a FOIA request, it is necessary to have Microsoft Outlook and a PDF converter (such as Nuance or Adobe) installed on your computer.

The files you will receive from the Office of Chief Information Officer will be a personal folder (PST) file in Microsoft Outlook. To upload the file into Microsoft Outlook, you should:

1. Save a copy of the PST file on your desktop
2. Open Microsoft Outlook
3. Along the top of the tool bar, click on 'FILE'
4. Select 'OPEN; then select 'OUTLOOK DATA FILE'
5. OPEN OUTLOOK DATA FILE box will open.
6. Select the PST file that you saved on your desktop.
7. On the left hand side of Microsoft Outlook, click on 'IMPORTED FILES' and select the 'IMPORTED FOLDERS' file that is highlighted. This will be the emails from the PST file.

Once the emails are imported, you can begin converting them to PDF files.

1. Select the first email, open the email.
2. In the upper left hand corner, click the 'OFFICE BUTTON'
3. Under the dropdown, select 'PRINT'
4. The print screen will pop up, for the name click the drop down and select ScanSoft
5. You will need to do this for each attachment
6. Save pdf files (in numerical order)

Once you have converted the PST files to individual PDF files, you will need to merge the files. To merge the individual files:

1. Open Nuance Pdf Converter

2. Select 'FILE'
3. On the drop down menu, select 'CREATE A PDF'
4. Then select 'COMBINE MULTIPLE FILES'
5. Select all of the individual pdf files.
6. Click 'RUN'

Now, you have one file that contains all of the converted email files. Save a copy of this file. You will have to review the files to see if the material is responsive to the FOIA request. Additionally you will have to propose redactions. To propose redactions:

1. Open the combined email file in your PDF converter enterprise software.
2. Add the redaction tool to your toolbar by clicking 'VIEW,' then select 'TOOLBARS' then select 'SECURITY' (A padlock, pen and sheet of paper will appear on your toolbar).
3. Next, click the sheet of paper so that a drop down box appears. Click 'REDACTION TOOL PROPERTIES,' then click on 'REDACTION CODE. On the drop down menu, select 'USFOIA.'
4. Repeat step three (above) to chose an exemption code entry (ex. B6, B5) and change exemption code
5. Select black as your mark color
6. Once you have chosen the proper exemption code, click on the sheet of paper and select 'MARK REDACTION.'
7. Highlight the information you wish to redact
8. **Do not "apply redactions" until the document has been reviewed**
9. Before the document is ready for review, use the redaction tool, select the color white, to remove any pages numbers at the bottom of the document.

EXEMPTIONS

The contents within this section are from the Department of Justice Guide to the Freedom of Information Act (2009 Edition).² Remember, this resource is not a substitute for legal advice. Any questions or legal issues should be forwarded to the Office of General Counsel. This information is included for general educational purposes only.

Exemption 4:

This exemption is intended to protect the interests of both the federal government and submitters of business information. It encourages submitters to voluntarily furnish useful business information to the government and it provides the government with an assurance that such information will be reliable. It also safeguards submitters of business information from the competitive disadvantage that could result from disclosure.

Exemption 4 covers two categories of records:

- (1) Trade secrets and,
- (2) Information which is commercial or financial, obtained from a person and privileged or confidential.

A "trade secret" is a secret, commercially valuable plan, formula, process, or device that is used for the making preparing, compounding, or processing of trade commodities and is the end product of either innovation or substantial effort.

The vast majority of Exemption 4 cases focus on whether the withheld information falls within the second category (commercial or financial information, obtained from a person, and privileged or confidential).

The terms "commercial" and "financial" should be given their ordinary meanings. Records are "commercial" so long as the submitter has a "commercial interest" in the information.

"Obtained from a person" refers to an individual as well as a wide range of entities, including corporations, state governments, and foreign governments, but it generally does not apply to information generated by the federal government (such information may meet the "commercial" privilege of Exemption 5).

The term "privileged" in Exemption 4 refers to civil discovery privileges, such as the deliberative process, attorney-client, and attorney work-product privileges.

² The full text of the Guide can be found on The Department of Justice website, at:
<http://www.justice.gov/oip/foia-guide.html>.

Whether commercial or financial information is "confidential" generally depends upon how the government obtained the information. If the information was voluntarily submitted, then it will be considered "confidential" if the submitter "customarily" does not disclose such information to the public. See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir 1992). If the information was required to be submitted, on the other hand, it will be considered confidential if disclosure would likely: 1. Impair the Government's ability to obtain necessary information in the future ("impairment prong"); or 2. Cause substantial competitive harm to the competitive position of the person from whom the information was obtained ("competitive harm" prong). Actual competition need not be demonstrated. Only evidence of competition and the likelihood of substantial competitive injury need be shown; or 3. Harm an "identifiable" private or governmental interest which the Congress sought to protect by enacting Exemption 4, such as the effectiveness of an agency program ("third prong"). See *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

The overwhelming number of Exemption 4 cases concern the "competitive harm" prong of the National Parks test for confidentiality. Competitive harm determinations are made on a case-by-case basis, and their focus is limited to harms flowing from affirmative use of information by competitors. In making competitive harm determinations, agencies typically must solicit and consider views of the business submitter. Mundane information about submitter's operations, general descriptions of a manufacturing process with no details, or disclosures that would cause "customer or employee disgruntlement" have been determined not to qualify as competitive harm. Nor will the disclosure of information that is already in the public domain likely cause substantial competitive harm.

Numerous types of competitive injury have been identified by the courts, including the harms caused generally by disclosure of a company's assets, profits, losses, market share, data describing a company's workforce that would reveal labor costs, profit margins, competitive vulnerability, a company's selling prices, purchase activity, freight charges, technical and commercial data, names of consultants and subcontractors and performance costs and equipment information; currently unannounced and future products, proprietary technical information, pricing strategy and subcontractor information.

Materials such as formulae, designs, drawings, research data, may be significant not as records, but as items of valuable property. Such an "intrinsically valuable" item of written work can be sold like any other commodity in the marketplace, bringing to its private owner the economic benefit of his/her proprietary interest.

If the Department can show the loss of market value resulting from a FOIA disclosure would be substantial, Exemption 4 (third prong) should be invoked to prevent it.

Exemption 5:

This exemption encompasses “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” This includes internal advice, recommendations, and subjective evaluations, as opposed to factual matters contained in records that pertain to the decision-making process of an agency, whether within or among agencies (as “agency” is defined in 5 U.S.C. 552(e)) or within the Office.

The three primary privileges incorporated in exemption (b)(5) are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

Three purposes constitute the basis for the **deliberative process privilege**: (1) to encourage open, frank discussions between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency’s action. Examples include:

1. The nonfactual portions of staff papers, including after-action reports and situation reports that contain staff evaluations, advice, opinions, or suggestions;
2. Advice, suggestions, or evaluations prepared on behalf of the Office by individual consultants or boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations;
3. The nonfactual portions of evaluations by an Office or by personnel of contractors;
4. Information of a speculative nature, tentative, or evaluative nature, or such matters as proposed plans to purchase, lease, or otherwise acquire and dispose of facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate Government functions;
5. Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government’s negotiating position or other commercial interests.

If any intra- or inter-agency record or reasonably segregable [releasable] portion of a record would be made available routinely through the “discovery process” in the course of litigation with the agency, then it should not be withheld from the general public even though discovery had not been sought in actual litigation. “Discovery” is the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing. The record or document need not be made available under this section if the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of the litigant, and balanced against the interests of the agency in maintaining its confidentiality.

Intra- or inter-agency memoranda or letters that are factual, or reasonably segregable portions that are factual, are routinely made available through “discovery” and shall be made available to a requester, unless the factual material is:

1. Otherwise exempt from release; or
2. Inextricably intertwined with the exempt information; or
3. So fragmented as to be uninformative.

A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

Also incorporated into exemption (b)(5) is the **attorney work-product privilege**, which protects documents and other memoranda, prepared by an attorney in contemplation of litigation. Its purpose is to protect the adversary trial process by insulating the attorney’s preparation from scrutiny. Litigation need never have actually commenced, so long as specific claims have been identified which make litigation probable. Rule 26(b)(3) of the Federal Rules of Civil Procedure allows the privilege to be used to protect documents prepared “by or for another party or by or for that other party’s representative.” The work-product privilege has been held to persist where the information has been shared with a party holding a common interest with the agency, even where it has become the basis for a final agency decision.

Attorney client privilege concerns “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.” *Mead Data Central, Inc. vs. Office of Air Force*, 566 F. 2d at 242 (D.C.Cir. 1977). It is not limited to litigation and includes protection for facts provided by the client as well as the attorney’s opinions.

Exemption (b)(5) also applies to trade secret or confidential research, development or commercial information generated by the Government itself in the process leading up to the

awarding of a contract. It expires once the contract is awarded or after an offer has been withdrawn. Early release of this information could put the government at a competitive disadvantage in the contract process. Other examples of this type of material would include: realty appraisal for property to be sold by the Government; background documents used to calculate its bid in a contracting out procedure; inter-agency cost estimates used in evaluating construction proposals; and reports prepared by expert witnesses.

If a prior release of information ordinarily protectable under exemption (b)(5) has been made by an agency such as disclosure to the subject of the record, under a protective order in an administrative proceeding, or in the course of criminal discovery, the agency's authority to later withhold the document is not diminished.

Exemption 6:

This exemption exempts "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Examples of files containing personal information similar to that contained in personnel and medical files are:

1. Those compiled to evaluate or determine the suitability of candidates for employment and the eligibility of individuals for security clearances, or for access to particularly sensitive classified information;
2. Files containing reports, records, and other materials pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

The information must be identifiable to a specific individual and not merely pertain to an individual.

Corporate and business information cannot be protected under exemption (b)(6), unless the information pertains to a small business where the individual and his/her business is identical. Then, depending on the information, exemption (b)(6) may be applicable.

The Supreme Court has limited the concept of public interest under the FOIA to the "core purpose" for which Congress enacted the FOIA: To shed light on an agency's performance of its statutory duties. Information that does not directly reveal the operations or activities of the Federal government falls outside the ambit of the public interest that the FOIA was enacted to serve. This public interest standard must be weighed against the threat to privacy. Put another way, it must be determined which is the greater result of disclosure: the harm to personal privacy or the benefit to the public.

Intimate details about an individual's life are usually protected, such as marital status, legitimacy of children, medical condition, welfare payments, family fights, and reputation.

Generally, civilian Federal employees' names, present and past position titles, grades, salaries, and duty stations, as well as position descriptions are releasable. Military personnel are given

greater privacy protection overseas because of threats of terrorism. Even favorable information, such as details of an employee's outstanding performance evaluation, can be protected on the basis that it may embarrass an individual or cause jealousy among co-workers. Also, release of such information reveals by omission the identities of those who did not receive high ratings, creating an invasion of their privacy.

When the request is from a third party concerning another individual and the records are of a particularly sensitive nature (such as information from the Employee Assistance Program files), it may be necessary to use the "Glomar" response; you would neither confirm nor deny the existence or nonexistence of records because to do so would in itself be an invasion of privacy. To be successful, the Glomar response would have to be used for all requests about individuals, whether or not information pertaining to them existed. Appeal rights are provided to the requester when the Glomar response is used.

In some instances, deletion of identifying information may not provide enough privacy protection when the requester may already know some information about the principals involved. This may happen when there is a small group of coworkers, or when information that has been previously publicized combined with other facts and circumstances could identify individuals. In these instances, the material would not be disclosed.

As a reminder, any incoming “Referral” must be logged into the FOIAonline as a Referral.

Referral Process Categories:

General Export Process

Examples of this type:

Incoming advertisements, flyers, FOIA requests in a Foreign language, Requests that do not make sense or are obviously not in the Business Lines of GSA, FOIAs that are determined to not be under GSA purview and we cannot determine the appropriate agency.

i.e. Solicitations, Phishing attempts, Banking Fraud Attempts, etc.

How we do we process these?:

1. An incoming action item comes into the FOIAonline System (Unassigned or My Cases).
2. Verify that it belongs in one of the above Example categories.
3. If it is determined to not belong to GSA, create a correspondence letter to the requester identifying GSA’s Mission and Goals and the specific action in exporting their request.
4. Use the FOIAonline system to export the file.

Screen Shots:

Referral Export Process

Overview:

Examples of this type:

Incoming Questions, FOIAs that are determined not to be GSA’s after researching but we can identify the appropriate Agency,

i.e. Social Security Info, Customs and Border Immigration Documents, Security Clearances, Veterans Affairs Information,

Screenshots:

Referral through FOIAonline Process - Partner Agencies

Overview:

Examples of this type: an incoming electronic referral from our partner Agencies.

Screenshots:

Other Referrals Process - both Paper and Electronic

Overview:

Examples of this type: Emails, Letters and/or facsimiles.

Screenshots:

Under Revision

This Page Intentionally Left Blank

Your Right to Federal Records

Your Right To Federal Records



**Questions and
Answers on the
Freedom of Information
Act and the Privacy Act**

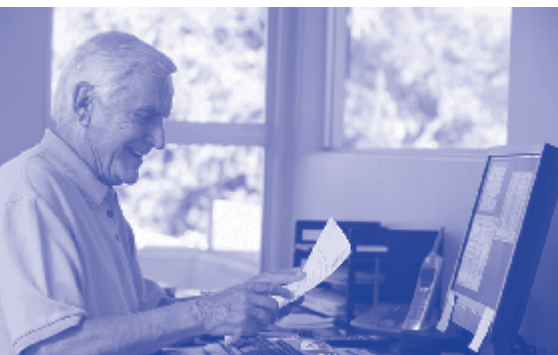


Table of Contents



Introduction.....i

The Freedom of Information Act

What the Freedom of Information Act is and
How to Use it 1

The Privacy Act

What the Privacy Act is and How to Use it ...10

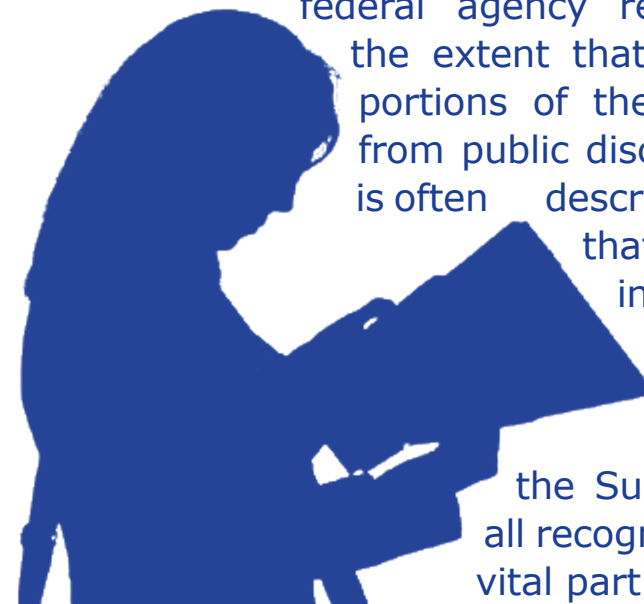
A Comparison of the Freedom of Information Act and the Privacy Act

Relationship Between the Two Laws and
Deciding Which to Use.....16

Other Sources of Information18

Introduction

Enacted in 1966, and taking effect on July 4, 1967, the Freedom of Information Act (FOIA) provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure. The FOIA is often described as the law that keeps citizens in the know about their government. As Congress, the President, and the Supreme Court have all recognized, the FOIA is a vital part of our democracy.



Under the FOIA, agencies must disclose any information that is requested – unless that information is protected from public disclosure. The FOIA also requires that agencies automatically disclose certain information, including frequently requested records. Agencies routinely post a wide variety of documents on their websites to inform the public about the activities of that agency. The primary source of FOIA-related information for the

public is the [FOIA.Gov](http://www.foia.gov) website (www.foia.gov). [FOIA.Gov](http://www.foia.gov) is a website created by the Department of Justice where you can learn about the FOIA, view significant FOIA releases, and access all the data collected by the Department of Justice reflecting agencies' administration of the FOIA. On [FOIA.Gov](http://www.foia.gov), you will find information about making a FOIA request, including agency contact information. [FOIA.Gov](http://www.foia.gov) contains a glossary of FOIA terms, frequently asked questions and

The Freedom of Information Act

answers connected with the FOIA, educational videos, and links and information regarding other Open Government websites. FOIA.Gov also provides detailed information about the number of FOIA requests received each year, how agencies handled these requests, as well as information on processing times, backlogs, fees and agency personnel who work to comply with the FOIA.

The Department of Justice's Office of Information Policy (OIP) oversees agency compliance with the FOIA and encourages all agencies to fully comply with both the letter and the spirit of the FOIA. At OIP's website (www.justice.gov/oip), you will find additional information, guidance, and a comprehensive legal treatise on the FOIA called the *United States Department of Justice Guide to the Freedom of Information Act*. The OIP website also includes summaries of court opinions decided under the FOIA and links to agencies' Annual FOIA Reports and Chief FOIA Officer Reports.

The Privacy Act of 1974 can also be used to obtain access to records about yourself. The Privacy Act establishes certain controls over how executive branch agencies of the federal government collect, maintain, use and disseminate personal information about individuals maintained by federal

agencies. The Privacy Act provides individuals with a means to seek access to and amendment of their records, but it pertains only to records about individual U.S. citizens and lawfully admitted permanent resident aliens. The FOIA, on the other hand, covers virtually all records in the possession and control of federal executive branch agencies.

This brochure provides basic guidance about how the FOIA and the Privacy Act work to assist you in exercising your rights. It uses a question-and-answer format to present information about these laws in a clear, simple manner. The brochure is not intended to be a comprehensive analysis of the complex issues associated with the FOIA and the Privacy Act.

The questions answered here are those frequently asked by persons who contact the Federal Citizen Information Center (FCIC) of the U.S. General Services Administration for information on the FOIA and the Privacy Act. The answers were compiled by the FCIC, along with the Department of Justice — the agency responsible for encouraging agency compliance with the FOIA in a spirit of openness and transparency. The Office of Management and Budget (OMB), which has a similar responsibility for the Privacy Act, reviewed the answers to questions on that law.

What information is available under the FOIA?

The Freedom of Information Act (FOIA) provides the public with a right of access to federal agency records except for those records (or portions of those records) that are protected from disclosure by any of nine exemptions. In addition, in three carefully defined situations, certain sensitive law enforcement records are "excluded" from the requirements of the FOIA.

The FOIA's exemptions provide protection for nine categories of information.

The exemptions cover:

1. classified national defense and foreign relations information,
2. internal agency personnel rules and practices,
3. information that is prohibited from disclosure by another law,
4. trade secrets and other confidential commercial information,
5. inter-agency or intra-agency communications that are protected by legal privileges,
6. information that would invade someone's personal privacy,
7. certain information compiled for law enforcement purposes,

8. information relating to the supervision of financial institutions, and
9. geological information on wells.

The FOIA does not apply to Congress, the courts, or the inner offices of the White House, nor does it apply to records in the custody of state or local governments. However, all state governments have their own statutes that provide procedures for access to state records. Details about a state's records access law are available on the state's official website.

Under the FOIA, you can request a copy of any record that is in an agency's files and it will be provided to you unless it is protected from disclosure by one of the exemptions or exclusions. Before making your FOIA request, first check the agency's website to see if the agency has already posted the information you seek. FOIA.Gov includes links to all the agencies' FOIA websites and so can be a useful starting point. For example, suppose you have heard that a certain toy has been recalled as a safety hazard and you want to know the details. The Consumer Product Safety Commission's website allows you to search for recall information by product type, company, product description, type of hazard, and location of manufacturer, and posts recall

The Freedom of Information Act

documents. If you want further information about the recall, you could make a FOIA request to the agency. Perhaps you want to read the latest inspection report on conditions at a nursing home certified for Medicare. Medicare's website includes information explaining the inspections, inspection reports, and tools for comparing reports from different



If the records you seek are about yourself, you can request them under both the FOIA and the Privacy Act of 1974.

facilities. If you need more information about the inspections or how they are conducted, you could make a FOIA request. In both of these examples, you could use the FOIA to request information from the appropriate federal agency.

If the records you seek are about yourself, you can request them under both the FOIA and the Privacy Act of 1974 (see "The Privacy Act" on page 10 for further information pertaining to

the Privacy Act). In such cases, records may be withheld from you only if exempt from release under both laws (See a "Sample Privacy Act Request Letter" on page 13).

When you make a FOIA request, you must describe the records that you seek as clearly and specifically as possible and comply with the agency's regulations for making requests. If the agency cannot identify and locate records that you have requested with a reasonable amount of effort, it will not be able to assist you. All federal agencies strive to handle all FOIA requests in a customer-friendly fashion, in accordance with the FOIA. For example, for requests that will require more than ten days for

the agency to process, the FOIA requires agencies to assign a tracking number to your request. Each agency must provide a telephone number or website by which a requester can use the assigned tracking number to obtain information about the status of a pending request. Further, each agency is required to provide a Public Liaison to assist in the resolution of disputes between the requester and the agency. However, the FOIA does not require agencies to do

research for you, analyze data, answer written questions, or in any other way create records in order to respond to your request.

Can I find agency records on the internet?

Yes, and it can be useful to look at the information that an agency makes available on the internet before making a FOIA request. Agencies place a wide variety of information on their websites that is useful to the general public and that describes their various programs and activities. Additionally, the FOIA requires that agencies make certain records available on the internet. For example, you will find certain agency opinions, staff manuals, policy statements, and records frequently requested under the FOIA. You can find links to the FOIA sites of federal agencies on the internet by going to FOIA.Gov (www.foia.gov, click on the "Learn" tab, then click on "Where to Make a FOIA Request").

Whom do I contact in the federal government with my request? How do I get the right address?

The FOIA.gov website provides contact data for all agencies. No single office of the federal government handles all FOIA requests. Each FOIA request must

be made to the particular agency that has the records that you seek. Therefore, it is important to send your request to the appropriate office. For example, if you want to know about an investigation of motor vehicle defects, write to the Department of Transportation. If you want information about a work-related accident at a nearby manufacturing plant, write to the Department of Labor (at its office in the region where the accident occurred). Most of the larger federal agencies have several FOIA offices. Some have one for each major bureau or component; others have one for each region of the country.

The Department of Justice maintains FOIA.Gov to help the public know where to make FOIA requests. FOIA.Gov offers a list of all the government agencies, briefly describes their missions, and provides contact information for each agency's FOIA office or offices. To access FOIA.Gov's list of federal agencies, visit www.foia.gov (click on the "Learn" tab, then click on "Where to Make a FOIA Request").

For additional assistance, you can contact the Federal Citizen Information Center (FCIC) of the U.S. General Services Administration. The FCIC is specially prepared to help you find the right agency, office, and

The Freedom of Information Act


address. See “Other Sources of Information” on page 18 for information on how to contact the FCIC.

The U.S. Government Manual, the official handbook of the federal government, may also be useful. It describes the programs within each federal agency and lists the names of top personnel and agency addresses. You can access the Manual online at www.gpoaccess.gov/gmanual/index.html. The Manual is also available at most public libraries and can be purchased from the Superintendent of Documents (See “Other Sources of Information” on page 18 for ordering instructions). In addition, each agency publishes FOIA regulations in the Code of Federal Regulations (CFR) that contain the mailing addresses of its FOIA offices. (For example, the Department of Justice’s FOIA regulations can be found in Volume 28 of the CFR, Part 16.) The CFR is available at most public libraries and on the internet at www.gpoaccess.gov/cfr/. [FOIA.Gov](http://www.foia.gov) also includes links to agencies’ FOIA websites, where you will find each agency’s FOIA regulations. To access [FOIA.Gov](http://www.foia.gov)’s list of federal agencies, visit www.foia.gov (click on the “Learn”

tab, then click on “Where to Make a FOIA Request”).

How do I request information under the FOIA?

After you determine the agency most likely to have the records you seek, you can make a FOIA request by simply writing a letter (see “Sample Freedom of Information Act Request Letter” on page 6) or, in many instances, sending an email or using a web-based request form sent to the appropriate agency. An agency’s



FOIA requesters are not required to state the reasons why they are making their requests.

FOIA website and regulations will provide information about how to make a request to that particular agency. Every agency is different, so you should verify if the agency accepts requests by email, fax or other electronic means. If you write a letter, mark both your letter and the envelope “Freedom

of Information Act Request” for the quickest possible handling of your request.

Regardless of the way you send the request, your request should identify the records that you seek as specifically as possible in order to increase the likelihood that the agency will be able to locate them. Any facts that you can furnish about the time, place, authors, events, subjects, and other details of the records will be helpful to the agency in deciding where to search for the records that you seek.

As a general rule, FOIA requesters are not required to state the reasons why they are making their requests. You can do so if you think it might help the agency to locate the records.

Can I request records in a specific format?

Yes, but the records may not be available in the requested format. If you request records that already exist in an electronic format, the FOIA requires agencies in almost all cases to provide these records to you in that same format, if that is what you prefer. However, if you request records that exist only in paper form, and you would like them in an electronic format, the agency is obligated to provide the records in that electronic

format only if it can do so with a reasonable amount of effort. The same is true if you request that electronic records be provided to you in an electronic format that is not readily reproducible.

What is the cost for getting records under the FOIA?

The FOIA permits agencies to charge fees to FOIA requesters. For noncommercial requesters, an agency can charge only for the actual cost of searching for records and the cost of making copies. Search fees usually range from about \$15 to \$40 per hour, depending upon the salary levels of the personnel needed for the search, although such fees may vary considerably by agency. The charge for copying documents can be as little as five cents or less per page at some agencies, but may be considerably more at other agencies.

For noncommercial requests, agencies will not charge for the first two hours of search time or for the first 100 pages of document copying. Agencies also will not charge if the total cost is minimal.

An agency should notify you before proceeding with a request that will involve substantial fees,

Sample Freedom of Information Act Request Letter

A sample FOIA request letter is shown below. Keep a copy of your request. You may need to refer to it in further correspondence with the agency.

Date

Agency FOIA Officer
Name of agency or agency component
Address (see discussion on page
3 on whom to contact)

Dear _____:

Under the Freedom of Information Act, 5 U.S.C. subsection 552, I am requesting access to [identify the records as clearly and specifically as possible].

If there are any fees for searching for or copying the records, please let me know before you work on my request. [Or, please supply the records without informing me of the cost if the fees do not exceed \$_____ which I agree to pay.]

If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures available under the law.

Optional: If you have any questions about handling this request, you can telephone me at _____ (home phone) or at _____ (office phone).

Sincerely,

Name
Address

unless your request letter already states your willingness to pay fees as large as that amount. If fees are charged, you can request a waiver of those fees if you can show that the records, when disclosed to you, will contribute significantly to the public's understanding of the operations or activities of the government.

How long will it take to answer my request?

Under the FOIA, federal agencies are generally required to respond to your request within twenty working days of receipt (excluding Saturdays, Sundays, and federal holidays). If you have not received a response by the end of that time (allowing for mailing time), you can contact the agency to ask about the status of your request. Agencies often need more time to find the records, examine them, possibly consult with other agencies or components within the same agency, decide whether to disclose all of the information requested, and prepare the records for release to you. Agencies can extend this twenty-day period for up to ten more working days, with written notice to you. Some agencies, particularly law enforcement agencies, receive large numbers of requests, many of which involve voluminous records or require exceptional care to process. If an

agency has a backlog of requests that were received before yours and has assigned a reasonable portion of its staff to work on the backlog, it is permissible for the agency to handle requests on a first-come, first-served basis even if the agency is unable to respond to all requests within the statutory time period. However, the FOIA does allow an agency to set up processing categories so that simple requests do not have to wait to be handled because a more complicated request was received by the agency first.

Is there any way for me to speed up the response time?

By making a simple request, meaning a request for a small volume of information, the agency will typically be able to process it more quickly. If an agency is unable to respond to your request in time, it may ask you to modify your request so that you can receive a response more quickly. Generally, it takes agencies less time to process simple requests involving a small number of records. Complex requests involving a greater number of records can take considerably more time to process. Therefore, you and an agency FOIA Officer or FOIA Public Liaison may want to discuss narrowing the scope

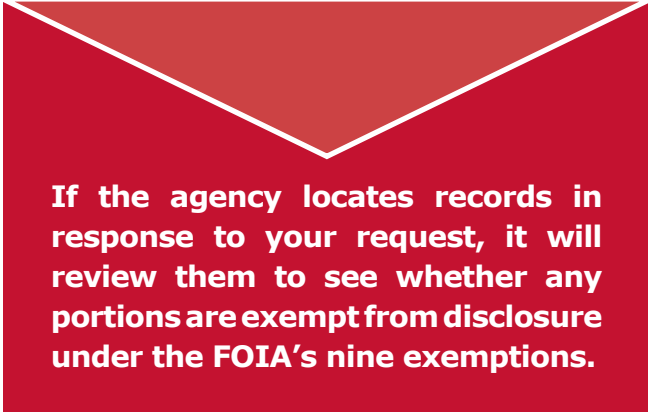
The Freedom of Information Act

of your request to speed up the response time or to agree on an alternative time frame for record processing.

Under certain conditions you may be entitled to have your request processed on an expedited basis.

There are two specific situations where a request will be expedited, which means that it is handled as soon as practicable. These two situations apply to every agency. First, a request will be expedited if the lack of expedited treatment could reasonably be expected to pose a threat to someone's life or physical safety. Second, if an individual will suffer the loss of substantial due process rights, his or her request will be expedited. A request will not normally be expedited merely because the requester is facing a court deadline in a judicial proceeding. However, an agency can allow expedited processing for other situations, depending on the regulations of that agency. The websites for each agency, which are accessible on [FOIA.Gov](https://www.foia.gov), will provide more information on specific rules and regulations regarding expedited processing.

Additionally, as noted above, each agency must provide a telephone number or website that you can use to obtain information about the status of your pending FOIA request. Further, if you wish to raise a concern about the service provided to you by an agency's



If the agency locates records in response to your request, it will review them to see whether any portions are exempt from disclosure under the FOIA's nine exemptions.

FOIA office, you can contact a supervisory agency official known as a "FOIA Public Liaison." Contact information for each agency's FOIA office(s) and FOIA Public Liaison(s) are posted on each agency's FOIA website and are also on [FOIA.Gov](https://www.foia.gov).

What happens if the agency denies my request?

If the agency locates records subject to the FOIA in response to your request, it will review

them to see whether any portions are exempt from disclosure under the FOIA's nine exemptions. For records that contain portions of information that is withheld, the agency will generally clearly mark those portions with the applicable FOIA exemption(s). Sometimes an agency will not locate any records in response to your request. In those cases, the agency will inform you that it could not locate records responsive to your request. If an agency denies your request, in whole or in part, it ordinarily must provide an estimate of the amount of material withheld, state the reason(s) for the denial, and inform you of your right to file an administrative appeal.

How do I appeal a denial?

You can file an administrative appeal if you are not satisfied with an agency's initial response to your request. Typically, all you need to do is send a letter to the agency stating that you are appealing the initial decision made on your request. There is no fee or cost involved. After an independent review, the appellate authority will send you a letter advising you of its decision.

Most agencies require that appeals be made within thirty to sixty days after the denial. The denial letter should tell you the

office to which your appeal letter should be addressed. For the quickest possible handling, you should mark both your appeal letter and the envelope "Freedom of Information Act Appeal."

Your appeal letter should include any tracking number the agency may have assigned to your request. It can save time in acting on your appeal if you include copies of your FOIA request and the agency's denial letter. You do not need to enclose copies of any documents released to you.

What can I do if my appeal is denied?

Once the administrative appeal process is complete, you have the option to seek mediation services from the Office of Government Information Services at the National Archives and Records Administration (www.archives.gov/ogis). The FOIA also provides requesters with the right to file a lawsuit.

The Privacy Act

What is the Privacy Act?

The federal government compiles a wide range of information on individuals. For example, if you were ever in the military or employed by a federal agency, there should be records of your service. If you have ever applied for a federal benefit or received a student loan guaranteed by the government, you are probably the subject of a file. There are records on every individual who has ever paid income taxes or received a check from Social Security or Medicare.

There are records on every individual who has ever paid income taxes or received a check from Social Security or Medicare.

The Privacy Act, passed by Congress in 1974, establishes certain controls over what personal information is collected by the federal government and

how it is used. This law guarantees three primary rights:

1. the right to see records about oneself, subject to the Privacy Act's exemptions;
2. the right to amend a nonexempt record if it is inaccurate, irrelevant, untimely, or incomplete; and
3. the right to sue the government for violations of the statute, such as permitting unauthorized individuals to read your records.

The Privacy Act also provides for certain limitations on agency information practices, such as requiring that information about an individual be collected from that individual to the greatest extent practicable; requiring agencies to ensure that their records are accurate, relevant, timely, and complete; and prohibiting agencies from maintaining information

describing how an individual exercises his or her First Amendment rights unless the individual consents to it, a statute permits it, or it is within the scope



of an authorized law enforcement investigation.

What information can I request under the Privacy Act?

The Privacy Act applies only to records about individuals maintained by agencies in the executive branch of the federal government. It applies to these records only if they are in a "system of records," which means they are retrieved by an individual's name, Social Security number, or some other personal identifier. In other words, the Privacy Act does not apply to information about individuals in records that are filed under other subjects, such as organizations or events, unless the agency also indexes and retrieves them

by individual names or other personal identifiers.

There are ten exemptions to the Privacy Act under which an agency can withhold certain kinds of information from you. Examples of exempt records are those containing classified information on national security and those concerning criminal investigations. Another exemption often used by agencies is that which protects information that would identify a confidential source. For example, if an investigator questions a person about your qualifications for federal employment and that person agrees to answer only if his identity is protected, then his name or any information that would identify him can be withheld. The ten exemptions are set out in the law.

The Privacy Act

If you are interested in more details, you should read the Privacy Act in its entirety. Though this law is too lengthy to publish as

Whom do I contact in the federal government with my request? How do I get the right address?

As with the FOIA, no one office handles all Privacy Act requests. To locate the proper agency to handle your request, follow the same guidelines as for the Freedom of Information Act.

How do I know if an agency has a file on me?

part of this brochure, it is readily available. It is printed in the U.S. Code (Section 552a of Title 5), which can be found in many public and school libraries. You can also order a copy of the Privacy Act of 1974, Public Law 93-579, from the Superintendent of Documents (ordering instructions are on page 20). Also, the full text of the Privacy Act is available on the Department of Justice's website at www.justice.gov/opcl (click on "Privacy Act of 1974," then select the link "Privacy Act of 1974, 5 U.S.C. § 552a").

If you think a particular agency has a file pertaining to you, you can write to the Privacy Act Officer. Agencies are generally required to inform you, upon request, whether or not they have files on you. In addition, agencies are required to report publicly the existence of all systems of records they keep on individuals. The Office of the Federal Register makes available on the internet a compilation of each agency's systems of records notices, including exemptions, as well as its Privacy Act regulations. The Privacy Act Issuances Compilation includes most systems, is updated every two years, and can be

Sample Privacy Act Request Letter

Date
Agency FOIA/Privacy Act Officer
Name of agency or agency component
Address (See discussion on
pages 3-4 on whom to contact)

Re: Privacy Act Request

Dear _____:

Under the Freedom of Information Act, 5 U.S.C. subsection 552, and the Privacy Act, 5 U.S.C. subsection 552a, I am requesting access to [identify the records as clearly and specifically as possible].

If there are any fees for searching for or copying the records, please let me know before you work on my request. [Or, please supply the records without informing me of the cost if the fees do not exceed \$_____ which I agree to pay.]

If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures available under the law.

Optional: If you have any questions about handling this request, you can telephone me at _____ (home phone) or at _____ (office phone).

Sincerely,

Name
Address
Enclosure (proof of identity)

The Privacy Act

found at www.gpoaccess.gov/privacyact/index.html.

How do I request information under the Privacy Act?

Write a letter to the agency that you believe may have a file pertaining to you. Address your request to the agency's Privacy Act Officer. Be sure to write "Privacy Act Request" clearly on both the letter and the envelope.

Most agencies require some proof of identity before they will give you your records. Therefore, it is a good idea to enclose proof of identity (such as a copy of your driver's license) with your full name and address. Do not send any original documents. Remember to sign your request for information, since your signature is a form of identification. If an agency needs more proof of identity before releasing your files, it will let you know.

Give as much information as possible as to why you believe the agency has records about you. The agency should process your request or contact you for additional information.

A "Sample Privacy Act Request Letter" is available on the previous page. Keep a copy of your

request. You may need to refer to it in further correspondence with the agency.

What is the cost for getting records under the Privacy Act?

Under the Privacy Act, an agency can charge only for the cost of copying records, not for time spent locating them.

How long will it take to answer my request?

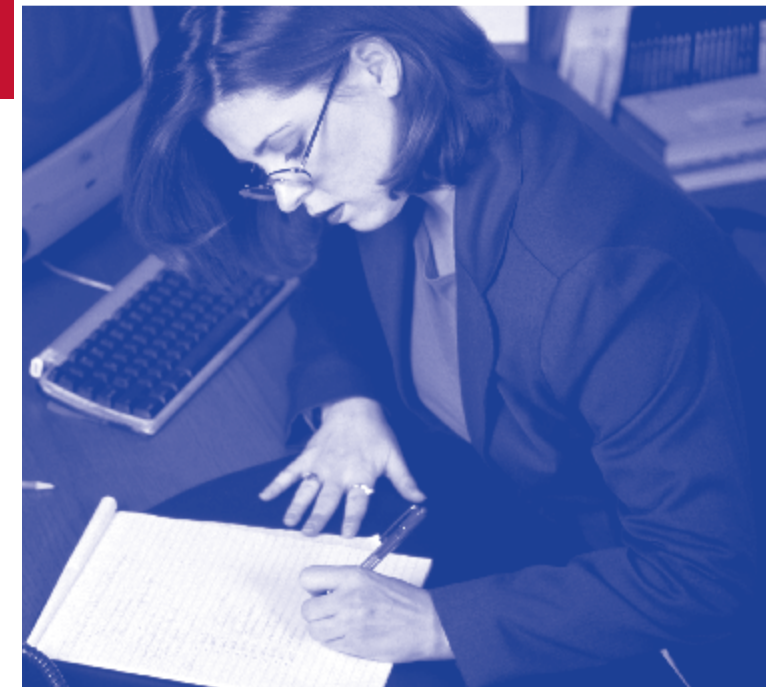
Under the terms of the Privacy Act, the agency is not required to reply to a request within a given period of time. However, most agencies have adopted the FOIA response times. If you do not receive any response within four weeks or so, you might wish to write again, enclosing a copy of your original request.

What if I find that a federal agency has incorrect information about me in its files?

The Privacy Act requires agencies maintaining personal information about individuals to keep accurate, relevant, timely, and complete files. If, after seeing your file, you believe that it contains incorrect information and should be

amended, write to the agency official who released the record to you. Include all pertinent documentation for each change you are requesting. The agency will let you know if further proof is needed. The law requires an agency to notify you of the receipt of such an amendment request within 10 working days of receipt. If your request for amendment is granted, the agency will tell you precisely what will be done to amend the record. You can appeal any denial.

Even if an agency denies your appeal, you have the right to submit a statement explaining why you think the record is wrong and the agency must attach your statement to any nonexempt records involved. The agency must also inform you of your right to go to court and have a judge review the denial of your appeal.



What can I do if I am denied information requested under the Privacy Act?

There is no required procedure for Privacy Act appeals, but an agency should advise you of its own appeal procedure when it makes a denial. Should the agency deny your appeal, you can take the matter to court.

A Comparison of the Freedom of Information Act and the Privacy Act

What is the relationship between the FOIA and the Privacy Act?

Although the two laws were enacted for different purposes, there is some similarity in their provisions. Both

Both the FOIA and the Privacy Act give you the right to request access to records held by agencies of the federal government.

the FOIA and the Privacy Act give you the right to request access to records held by agencies of the federal government. The FOIA's access rights are generally given to "any person," but the Privacy Act's access rights are given only to the individual who is the subject of the records sought (if that individual is a U.S. citizen or a lawfully admitted permanent resident alien).

The FOIA applies to all federal agency records. The Privacy Act, however, only applies to those federal agency records that contain information about individuals, are maintained in a "system of records," and which are retrievable by a name or personal identifier of the individual. Each law has a somewhat different set of fees, time limits, and exemptions from its right of access.

If the information you seek pertains to the activities of a federal agency, an organization, or some person other than yourself, you should make your request under the FOIA, which covers all agency records. If you request records relating to another person, and release of the records could invade that person's privacy, they ordinarily will not be disclosed to you.

If the information you seek is about yourself, you should also make the request under the Privacy Act, which covers most records of federal agencies that pertain to individuals. Sometimes you can use the FOIA to obtain



records about yourself that are not in a Privacy Act "system of records." If you are in doubt about which law applies or would better suit your needs, you can refer to both in your request letter. If you request records about yourself and do not specify a statute, the agency will, as a matter of policy, process the request under both the FOIA and the Privacy Act and withhold requested information from you only if it is exempt under both laws.

Other Sources of Information

FOIA.Gov

FOIA.Gov (www.foia.gov) is the primary source of FOIA-related information for the public. This website, created by the Department of Justice provides educational resources about the FOIA, significant FOIA releases, and access to details about all the agencies' administration of the FOIA. FOIA.Gov also includes information about making a FOIA request, including agency contact information. The website contains a glossary of FOIA terms, frequently asked questions and answers connected with the FOIA, and educational videos.

Federal Citizen Information Center

The General Services Administration's Office of Citizen Services and Innovative Technologies—the nation's focal point for data, information and services offered by the federal government to citizens—manages the Federal Citizen Information Center's National Contact Center. The NCC helps connect people with information about federal agencies, services, and programs. You can ask them for assistance in locating the FOIA office in any federal agency. Call toll-free 1-800-FED-INFO

(1-800-333-4636) from anywhere in the United States, Monday through Friday, 8 a.m. to 8 p.m. Eastern time. Recorded information on frequently requested subjects is available around the clock. You can also search USA.gov—the official web portal of the federal government—to locate FOIA offices for specific federal agencies, email a question using USA.gov's web form or chat live online with a federal information specialist.

In addition, FCIC (www.gsa.gov/FCIC) publishes the free Consumer Information Catalog, which lists approximately 200 free and low-cost federal booklets on a wide variety of consumer topics. For a free printed copy of the Catalog, write to Consumer Information Catalog, Pueblo, CO 81009. The Catalog is also available online through FCIC's website at Publications.USA.gov, as is a text version of this publication (click on "Federal Programs," and scroll down to this publication's title).

U.S. Government Manual

The *U.S. Government Manual* is the official handbook of the federal government. Published by the National Archives and Records Administration, it describes the programs in each federal agency, lists the names of top personnel,

the mailing address, and a general information telephone number. You can access the Manual online at www.gpoaccess.gov/gmanual. It is available in most public libraries or can be purchased from the U.S. Government Printing Office (GPO). For pricing and ordering information, call toll-free 1-866-512-1800 (202-512-1800 in the Washington, D.C. area) or visit the online U.S. Government Bookstore at bookstore.gpo.gov/. The text version is available on the U.S. Government Printing Office's website at www.gpoaccess.gov/gmanual.

A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records

This booklet, written by the Committee on Government Reform, U.S. House of Representatives, provides a much more detailed explanation of the Freedom of Information Act and the Privacy Act than this brochure. You can purchase this booklet from GPO by calling toll-free 1 (866) 512-1800 (202-512-1800 in the Washington, D.C. area). This document is also available online at www.fas.org/sgp/foia/citizen.html.

The Freedom of Information Act

A copy of the FOIA is available electronically on the Department of Justice's website at www.justice.gov/oip (click on "FOIA Resources," and then click on "Text of the FOIA"). You can order a copy of the FOIA from GPO by calling toll-free 1 (866) 512-1800 (202-512-1800 in the Washington, D.C. area). A complete copy of the FOIA can also be found at Section 552 of Title 5 of the U.S. Code, available at www.gpoaccess.gov (click on "United States Code" under "GPO Access Resources by Branch").

Freedom of Information Act Guide

The *United States Department of Justice Guide to the Freedom of Information Act* is a comprehensive legal treatise of the FOIA's procedural requirements, exemptions, and litigation considerations. It contains a detailed analysis of the key judicial opinions issued on the FOIA. The Guide is prepared and updated by the staff of the Department of Justice's Office of Information Policy. This publication is available online at the Department of Justice's

Other Sources of Information

website at www.justice.gov/foia (click on "FOIA OIP Guidance," click on "DOJ Guide to the FOIA"). You can also purchase this book from the Government Printing Office at bookstore.gpo.gov or by calling 1-866-512-1800 (202-512-1800 in the Washington, D.C. area).

FOIA Post

The Department of Justice's Office of Information Policy (OIP) posts a wide variety of news and guidance related to the FOIA on its website. *FOIA Post* is now the Department's blog which provides agencies and the public with information concerning the FOIA and its proper interpretation. When OIP issues guidance on the FOIA, it alerts agencies thru FOIA Post. Training announcements and guidelines for submitting annual reports and Chief FOIA Officer Reports are all conveyed on FOIA Post. *FOIA Post* can be found on the home page of OIP's website, www.justice.gov/oip.

FOIA Court Decisions

The Department of Justice's Office of Information Policy posts summaries each month of litigation cases decided under the FOIA. The monthly case summaries are organized both chronologically, beginning in December 2009, and

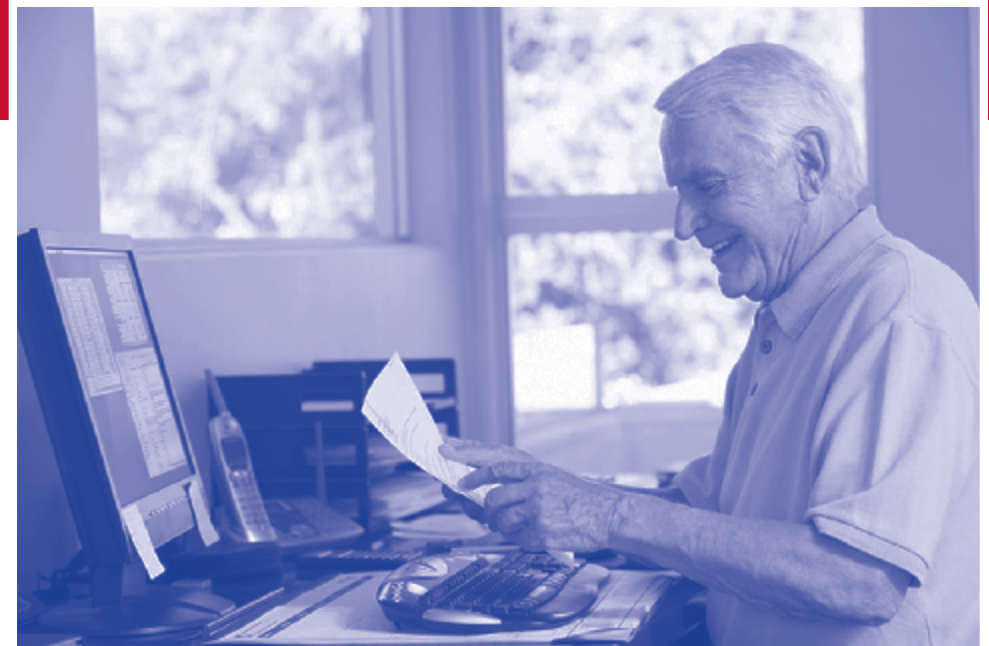
by topic. These case summaries can be found on the Department of Justice's website at www.justice.gov/oip (click on "FOIA Resources," then click on "Court Decisions").

FOIA Reference Guides or Handbooks

Each federal department or agency is required to maintain a reference guide or handbook to assist the public in making FOIA requests to that agency. Included is contact information for each agency's FOIA office(s) and FOIA Public Liaison(s). These reference guides for FOIA requesters are available on each agency's FOIA website. For example, the Department of Justice's FOIA Reference Guide is available at www.justice.gov/oip. All agency FOIA websites are also available on FOIA.Gov.

The Privacy Act of 1974

A copy of the Privacy Act is available electronically on the Department of Justice's website at www.justice.gov/opcl (click on "Privacy Act of 1974," then select the link "Privacy Act of 1974, 5 U.S.C. § 552a"). You can order a copy of the Privacy Act, Public Law 93-579, from GPO by calling toll-free 1 (866) 512-1800



(202-512-1800 in the Washington, D.C. area).

Overview of the Privacy Act of 1974

The *Overview of the Privacy Act of 1974* is prepared by the Department of Justice's Office of Privacy and Civil Liberties in coordination with the Office of Management and Budget, and is a discussion of the provisions of the Privacy Act. This book also contains the text of the Privacy Act. It can be viewed on the Department of Justice's website at www.justice.gov/opcl/privacyact1974.htm (click on "Overview of the Privacy Act of 1974.")



July 2011

A joint publication of:

U.S. Department of Justice
Washington, DC 20530
www.justice.gov

Executive Office of the President
Office of Management and Budget
Washington, DC 20503
www.whitehouse.gov/omb

U.S. General Services Administration
Office of Citizen Services &
Innovative Technologies
Federal Citizen Information Center
Washington, DC 20417
www.gsa.gov/FCIC
Publications.USA.gov

This Page Intentionally Left Blank